IN THE UNITED STATES CIRCUIT COURT OF APPEALS IN AND FOR THE FIFTH CIRCUIT.

No. 1867-M-Bankruptcy.

ED. C. WRIGHT & COMPANY, ET AL.,
Appellants,

versus

CITY OF CORAL GABLES, FLORIDA,
Appellee.

TRANSCRIPT OF RECORD ON APPEAL.

On June 27, 1940, Petition for Composition of Debts was filed in words and figures as follows, to-wit:

PETITION FOR COMPOSITION OF DEBTS.

Filed June 27, 1940.

In the United States District Court in and for the Southern District of Florida, Miami Division.

In the Matter of:
The City of Coral Gables, Florida.
In Bankruptcy No. 1867.

To: The Honorable, the Judges of the United States District Court in and for the Southern District of Florida:

Comes now your petitioner, The City of Coral Gables, Florida, and represents unto the Court that it is a municipal corporation, created, organized and existing under the

laws of the State of Florida, particularly Chapter 13,972, Special Acts of 1929, as amended by subsequent laws; that such municipality is located in Dade County, Florida, and that the said The City of Coral Gables is a municipality within the meaning of Sections 81, 82, 83 and 84 of Chapter Nine of the Acts of Congress relating to bankruptcy, and as such, is entitled to file a petition in this Court under the provisions of said Acts of Congress in order to effect a plan of composition of its debts; that this petitioner, as such municipality, is located and situated within the territorial jurisdiction of the District Court of the Unted States, in and for the Southern District of Florida, and in the Miami Division thereof; that this petitioner is authorized to proceed under the Acts of Congress aforesaid, on account of unpaid principal and interest due by your petitioner evidenced by its outstanding bonds and interest coupons, and on account of the unpaid principal and interest upon outstanding judgments and other debts as hereinafter set forth; that all of the said indebtedness of said City evidenced by such bonds, interest coupons, judgments and other debts constitute and are general obligations of The City of Coral Gables, Florida, petitioner herein, payable by the levy of ad valorem taxes to be levied upon all the taxable property within the corporate limits of your petitioner, excepting the two following judgments, to-wit, in favor of Parker Maxwell in the principal amount of $274.65, with interest to January 1, 1937, in the amount of $50.12, and in favor of E. B. Connolly in the principal amount of $765.28 with interest to January 1, 1937, in the amount of $140.34, and Refunding Bonds, Second Series, Nos. SB81 to SB119, inclusive, and SB128 and SB129 in the principal amount of $20,500.00, and Tax Participation Certificates, Second Series, Nos. SC- to SC214, inclusive, and SC276 in original principal amount of $107,014.80, exchanged for accounts payable and due to the Florida Power & Light

Company, and that the said last named judgments and refunding securities exchanged for the said accounts are payable by the levy of ad valorem taxes to be levied upon all property within the corporate limits of your petitioner, which is not exempt as homestead under the present constitution of the State of Florida.

1. Your petitioner further shows that in December of 1936 The City of Coral Gables proposed to its creditors, the holders of bonds, interest coupons and other debts, a plan of composition of its debts providing for the exchange of new evidences of indebtedness, which said plan of composition was designated as "Readjustment and Refunding Plan of 1937", wherein was set forth the terms upon which bonds, interest coupons and judgments and other debts of said City might be compromised and evidenced by new forms of indebtedness, which debt readjustment and refunding plan is fully set forth in Ordinance No. 269, adopted by the City Commission of The City of Coral Gables on December 23, 1936, a printed copy of which is filed herewith marked Exhibit "1", and by reference made a part hereof; and that on the 4th day of September, A. D. 1937, The City of Coral Gables enacted Ordinance No. 289, modifying the plan of refunding set forth in Ordinance No. 269, copy of which Ordinance No. 289 is filed herewith marked Exhibit "2", and by reference made a part hereof. After the adoption of Ordinance No. 289 the petitioner procured the agreement of most of its creditors to the modification of said plan, which was made necessary by the ruling of the Supreme Court of the State of Florida in the proceeding for the validation of the said refunding securities.

2. Your petitioner further shows that it filed in the Circuit Court in and for the Eleventh Judicial Circuit of the State of Florida, Dade County, its petition for the validation of the Refunding Bonds and Tax Participation

Certificates, Issue of January 1, 1937, as authorized by Ordinance No. 269, and the said Circuit Court did, on the 12th day of April, A. D. 1937, enter its final decree validating the said Refunding Bonds and Tax Participation Certificates excepting as to the said obligations of the City specifically enumerated in said Ordinance No. 289 (exhibit 2), and that thereafter the City appealed the said cause to the Supreme Court of the State of Florida and that said Court affirmed the final decree of the Circuit Court, and subsequently to this decision of the Supreme Court, rendered on the 30th day of July, A. D. 1937, the City enacted Ordinance No. 289, so modifying the Plan of Refunding as to make it conform to the opinion of the Court.

3. That in accordance with the terms and provisions of said Ordinance No. 269, as amended by Ordinance No. 289, during the month of September 1937 and subsequent thereto, The City of Coral Gables issued Refunding Bonds of the Issue of January 1, 1937, in the total principal amount of $3,954,016.98 and Tax Participation Certificates of the Issue of January 1, 1937, in the total principal amount of $6,568,751.57 and exchanged them with the owners and holders of the old bonds and debts of the petitioner in the total principal amount of $7,908,033.95 and old coupons and interest due in the total amount of $2,614,734.60, making a total of $10,522,768.55 old debt exchanged. These exchanges were made and consummated between the petitioner and the holders of its old bonds and coupons and other debts during the period beginning in the month of September 1937 and the day of filing this petition.

Your petitioner further shows that its total debt of all classes outstanding as of January 1, 1937, including principal, interest coupons, and other interest, was $11,182,584.19; that your petitioner has purchased or acquired, for its sinking fund or for the use and investment of its

funds other than those established by Ordinance No. 269, as amended by Ordinance No. 289, for the service and retirement of the refunding securities of January 1, 1937, $475,198.98 of the Refunding Bonds and $234,746.92 of the Tax Participation Certificates of the Issue of January 1, 1937, making a total of $709,945.90 of the refunding securities which it owns, holds or controls, or has canceled and which your petitioner has omitted from the further statements, figures and exhibits of this petition, excepting only those of the previous paragraph and in Exhibit "E", filed herewith and by reference made a part hereof; and that the remaining $10,472,638.29 represents the January 1, 1937, value of petitioner's present debt to others, as shown in detail in Exhibit "D", filed herewith, and by reference made a part hereof, which Exhibit "D" is an analysis of the outstanding indebtedness of The City of Coral Gables, as of the date of this petition, in terms, as to value and class, of the debt existing on January 1, 1937. Of the total outstanding indebtedness in the amount of $11,182,584.19 as of January 1, 1937, $10,522,768.55 was exchanged for the refunding securities of January 1, 1937, as shown by the foregoing paragraph, and $659,815.64 remains unexchanged.

4. The plan of composition set forth in the said ordinances is for an exchange of old bonds, other debts and interest for Refunding Bonds and Tax Participation Certificates as of the principal and interest amount of the old obligations on January 1, 1937. The Refunding Bonds are dated January 1, 1937 and mature July 1, 1977, and are authorized to be issued in the amount of one-half of the outstanding principal debt. The Refunding Bonds bear interest at the following rates: 2½ per cent for 3 years, 3 per cent for the next 6 years, 3½ percent for the next 2 years, 4 per cent for the next 5 years, 4½ per cent for the next 10 years, 5 per cent thereafter to maturity, and there are specific

annual requirements for the payments into the sinking fund after the tenth year, which fund is to be used periodically for retirement of bonds by purchase or by call by lot. During the first ten years of the life of the Refunding Bonds the City is obligated to buy and cancel $500,000.00 of the bonds from collections of delinquent tax liens.

Tax Participation Certificates are dated January 1, 1937, and are authorized to be issued for the remaining half of principal debt and accrued interest to January 1, 1937. These certificates are, in effect, liquidating certificates, have no maturity, bear no interest, and are payable only from surpluses in debt service collections for these refunding issues, as hereinafter described in the following paragraph. These certificates expire regardless of unpaid balance thereon upon the payment on December 31, 1977, of all moneys in the surplus fund set aside for them as of December 15, 1977, and after this payment the City has no obligations under the certificates.

To service and retire these Refunding Bonds and Tax Participation Certificates, the petitioner covenants to assess all property at full market value; to levy annually such millages as may be necessary for the interest and sinking fund requirements of the Refunding Bonds, and never less than: 6 mills for the first 5 years; 7 mills for the next 5 years; 7½ mills for the next 10 years; and 8 mills thereafter; to apply proceeds of such levies first to the payment of interest and sinking fund requirements of the Refunding Bonds, and annually distribute pro-rata to the Tax Participation Certificates, as liquidating dividends, any money remaining after the payment of the bond interest and sinking fund requirements.

The effect of the settlement is to give to the creditors of the petitioner interest bearing bonds up to the limit

of the petitioner's reasonable ability to service and repay, and in addition a form of security which will enable the creditors to share in the future growth and development with the possible, and not improbable, result that by the end of the term of the refunding securities, they will receive the entire amount owed to them as of January 1, 1937, including accrued interest to that date, and during the term of the securities the creditors will receive interest on that portion of the debt (one-half of the principal) exchanged for Refunding Bonds.

5. Your petitioner has, each fiscal year beginning July 1, 1937, since the refunding of its indebtedness levied the full debt service millage required by Ordinance No. 269, and now has on hand funds to pay the mature interest coupons on all of the Refunding Bonds and the annual dividends upon Tax Participation Certificates held by the petitioner duly executed and ready for exchange with the present owners and holders of old bonds and other debts of the petitioner, which have not been exchanged.

6. Your petitioner further shows that on March 5, A. D. 1940, the City Commission of The City of Coral Gables enacted Ordinance No. 347 being an ordinance declaring the necessity of the filing of a petition in bankruptcy, adopting the refunding plan set forth in Ordinance No. 269, as amended by Ordinance No. 289, as a plan of composition in such bankruptcy proceedings, and authorizing the City Attorney to file this petition, copy of which Ordinance No. 347 is filed herewith marked Exhibit "3", and by reference made a part hereof.

7. Your petitioner further shows that in the partial completion of its said plan of composition as hereinbefore set forth, there have been exchanged and canceled old bonds of the outstanding series and other debts, and inter-

est, as listed in Exhibit "E", filed herewith and by reference made a part hereof. The several old bonds and coupons so exchanged have been canceled by the petitioner and the debts have been released and satisfied. For the above old bonds and other debts so delivered for exchange, together with interest coupons and interest on matured bonds, and interest on said debts, there have been delivered to various and sundry creditors of the petitioner the new evidences of indebtedness described and listed in Exhibits "A" and "B", filed herewith and by reference made a part hereof, Exhibit "A" being, "List of Formal Written Consents or Acceptances to the Plan of Composition, filed by owners of Refunding Bonds and Tax Participation Certificates of the Issues of January 1, 1937", and Exhibit "B" being, "List of Refunding Bonds and Tax Participation Certificates of the Issues of January 1, 1937, which have been issued in exchange for Original Debts surrendered under the Plan of Composition, but as to which the present owners have not filed Formal Written Consents or Acceptances."

None of the Refunding Bonds and Tax Participation Certificates listed in Exhibits "A" and "B" are owned, held, or controlled by the petitioner.

8. Your petitioner further shows that there now remains outstanding in the hands of creditors of the petitioner, other than the Refunding Bonds and Tax Participation Certificates aforesaid, the securities and debts listed in detail in Exhibit "C", filed herewith and by reference made a part hereof, Exhibit "C" being, "List of Original Bonds or Debts, and Accrued and Unpaid Interest to January 1, 1937, not exchanged for the Refunding Issues and not Consenting to or Accepting the Plan of Composition, showing last known owner." Exhibit "C" also shows all unpaid judgments and the bonds, coupons and other in-

terest thereon of the petitioner, upon which said judgments are based.

9. Your petitioner further shows that the plan of composition proposed by the petitioner to its creditors is that hereinabove set forth and as shown by the terms and conditions of the aforesaid Ordinances No. 269 and 289 (Exhibits 1 and 2). The creditors of petitioner who have accepted said plan in writing and consented thereto, together with their addresses and respective securities, are as listed in said Exhibit "A" above referred to.

The said creditors of your petitioner named and listed in said Exhibit "A" own not less than 51 per cent, in amount of the securities affected by the aforesaid plan of composition, and the securities listed in Exhibit "A" do not include any such securities which are owned, held or controlled by the petitioner, and the said creditors have accepted the said plan of composition in writing as aforesaid.

A form of acceptance executed by said creditors is filed herewith, marked Exhibit "4" and by reference made a part hereof. All of the original acceptances executed by said creditors are bound in volumes marked Exhibit "5" and Exhibit "5A", and by reference made a part of this petition.

10. Exhibits "A", "B" and "C", filed herewith, contain a complete list of all known creditors of the petitioner owning bonds, judgments and other debts issued and incurred by the petitioner which will be affected by the plan of composition herein proposed, and the said lists contain the addresses of all known creditors insofar as known to petitioner and a description of their respective securities, Exhibit "A" showing those who have accepted the plan of composition together with their separate ad-

dresses, and Exhibits "B" and "C" showing those who have not accepted the said plan of composition, together with their respective addresses, insofar as known to petitioner.

11. Your petitioner further shows that the assessed valuation of all taxable property, real and personal, within the territorial limits of your petitioner and liable for the levy of ad valorem taxes for the payment of the aforementioned principal and interest, both refunded and unrefunded, as the same appears upon the assessment rolls of your petitioner for the tax year 1939, is the sum of $24,069,877.00. That included in said assessed valuation is the assessed value of vacant lands in the amount of $3,478,867.00, the taxes against which have been delinquent for periods up to ten years and were then and are now uncollectible and cannot be relied upon as revenue sources for payment of obligations of the City. This leaves an assessed valuation upon which the petitioner can safely anticipate the collection of taxes in the amount of $20,591,010.00. That such taxable property as shown by such assessment roll is assessed at full value and for a much larger sum than the same is assessed for taxation purposes by the County of Dade, State of Florida, wherein your petitioner is situated.

That during the fiscal years 1929-30, to and including 1933-34, the amounts collected by this petitioner for taxes levied for operating purposes and for the purpose of paying the principal and interest upon such outstanding obligations were wholly insufficient to provide for the necessary operating expenses of the petitioner and for the payment of principal and interest of such outstanding obligations as the same severally matured. During the said years the tax collectibility in The City of Coral Gables was so low that the petitioner had difficulty in financing the necessary municipal operations. During these years prac-

tically none of the taxes levied against the unimproved or vacant properties in The City of Coral Gables, comprising some twenty-odd thousand lots, were paid; that during the fiscal years 1935 to 1939, both inclusive, the amounts collected by this petitioner for taxes levied solely for the purpose of paying the principal and interest upon such outstanding obligations have been wholly insufficient to provide for the payment of principal and interest of all such outstanding obligations as the same severally matured.

As of January 1, 1937 your petitioner had outstanding a bonded indebtedness in the principal amount of $7,977,000.00, upon which unpaid interest accrued to January 1, 1937 aggregated $2,659,192.31; and as of said date your petitioner had outstanding other indebtedness in the principal amount of $412,073.90, upon which unpaid interest accrued to January 1, 1937 aggregated $134,317.98. Of the above principal amount of indebtedness $2,731,473.90 was past due on January 1, 1937. After January 1, 1937 the current annual interest accruals on the aforesaid outstanding indebtedness were in approximately the amount of $500,000.00, and the current annual principal maturities of the aforesaid indebtedness were in approximately the amount of $450,000.00. It was impossible for your petitioner, with its limited tax collectibility, to pay even the current annual interest on said bonds as it accrued, and equally as impossible for your petitioner to pay the current annual principal maturities as they became due.

Your petitioner further shows that during the entire period from the years 1930 to 1939, both inclusive, this petitioner has been in default in the payment of both principal and interest upon its old outstanding obligations and indebtedness, and that during such period of time there have occurred the greatest financial depressions in

the history of our Country, first the local Florida and then the nation-wide depression, so curtailing and depleting the incomes of the citizens and taxpayers of your petitioner that they have been unable to pay the assessments for taxes levied during this period for the payment of the principal and interest upon the outstanding obligations of your petitioner; that it was, and is, impracticable to levy a tax sufficient to meet such delinquencies on principal and interest on the outstanding indebtedness of your petitioner, and that the levy of an assessment at this time for the principal and interest of the bonds now past due, outstanding and unexchanged would be impossible to collect and such an excessive levy would be confiscatory, unfair, unreasonable and unjust and would result in the same stagnant condition that has existed in the financial affairs of your petitioner during the past decade.

Your petitioner further shows that during the year 1937 and subsequent thereto it has been commanded by peremptory writs of mandamus, issued out of the Federal Court, to make additional levies for the payment of principal and interest due under certain unexchanged obligations. Your petitioner further alleges that if this debt service tax burden is increased by the additional levy necessary to take care of the unexchanged old bonds and coupons not already placed in judgment, then there is grave danger that the financial structure of your petitioner would break down and its progress and growth would be impeded and deterred, and the only way your petitioner can avoid this disastrous result and avoid the detrimental effect of such a result upon its creditors is through this municipal bankruptcy proceeding.

12. Your petitioner further shows that the state and county taxes levied and assessed upon the taxable property within the limits of your petitioner is 68.375 mills

on the dollar of the county assessed value, equivalent to 17.09 mills on the approximate full value, and that such taxes are an overlapping or additional tax burden upon the property within the boundaries of The City of Coral Gables, and as such are a factor of limitation upon the tax millage which can be successfully levied by your petitioner.

13. Your petitioner further shows that the amount of the bonded and other indebtedness of your petitioner, outstanding at the time of the institution of the proposed plan of composition aforesaid, and at this time is so great that it is impossible for your petitioner to pay the same as it matures, and that your petitioner is insolvent and unable to pay its indebtedness as the same has matured, is maturing and will mature in the future, and that petitioner desires to effect the plan for the composition of its debts as set forth in this petition.

14. Your petitioner further shows that it desires to complete and consummate the plan of composition as hereinbefore set forth; that the holders of such securities as have been exchanged constitute approximately 94.1 per cent. of the old securities affected by said plan of composition; and more than 51 per cent. of all outstanding securities affected by said plan, exclusive of those owned, held or controlled by your petitioner, having consented in writing to the same, your petitioner is qualified under the said Municipal Bankruptcy Law to file this petition.

Your petitioner further shows that by Ordinance No. 347 (exhibit 3) adopted on the 5th day of March, A. D. 1940, your petitioner has re-adopted the aforesaid Ordinances Nos. 269 and 289 (exhibits 1 and 2) as a plan of composition and has authorized this petition to be filed in this Court for the purpose of completing and consummating the plan of composition hereinbefore outlined and set forth.

Your petitioner further shows that there are filed herewith lists or schedules marked Exhibits "A", "B" and "C" showing the names and, so far as known to petitioner, addresses of all creditors of petitioner, classified as follows to wit:

Exhibit "A"—"List of Formal Written Consents or Acceptances to the Plan of Composition, filed by owners of Refunding Bonds and Tax Participation Certificates of the Issues of January 1, 1937."

Exhibit "B"—"List of Refunding Bonds and Tax Participation Certificates of the Issues of January 1, 1937, which have been issued in exchange for Original Debts surrendered under the Plan of Composition, but as to which the present owners have not filed Formal Written Consents or Acceptances."

Exhibit "C": "List of Original Bonds or Debts, and Accrued and Unpaid Interest to January 1, 1937, not exchanged for the Refunding Issues and not Consenting to or Accepting the Plan of Composition, showing last known owner."

The above and foregoing schedules show the names and addresses, amounts and kind of securities held by said creditors so far as the same are known to your petitioner, and in the instances where the addresses of such creditors are unknown, the names and addresses of the attorneys of record representing such creditor or creditors in the last proceedings had in the Courts in the State of Florida and in the Federal Court are shown; that petitioner has exercised reasonable diligence in order to ascertain the names and addresses of holders of such securities as above classified and has set forth all information relative to unknown owners as petitioner has been able to ascertain.

15. Your petitioner further shows that it has diligently attempted to fully consummate said plan and to bring

under the operation and effect of the same all outstanding securities, but that at the time of the filing of this petition it has been unable to exchange $326,000.00 principal amount of old bonds, of which $65,000.00 is now past due; that some of the petitioner's creditors who have not exchanged their securities as aforesaid, in order to effect a preference by suits or judgments or writs of mandamus, have, or will interfere with the orderly consummation and carrying out of said plan with fairness to all creditors, and that it is, therefore, necessary in order to consummate and fully complete said plan, that proceedings in bankruptcy under the terms and provisions of the acts aforesaid be filed and had, and that those creditors which have not yet accepted said plan be stayed and enjoined from commencing or instituting proceedings, or continuing proceedings already instituted, to effect a preference over the creditors who have accepted said plan, and that such orders or decrees may be entered in this cause as may be necessary to stay all such proceedings; that this petition is being filed in good faith and in the name of and on behalf of the petitioner by the officers thereof duly authorized by law to take such action in its behalf, and that the filing of said petition was duly authorized by Ordinance No. 347 of the City Commission of The City of Coral Gables, Dade County, Florida, duly adopted at a meeting held on the 5th day of March, A. D. 1940, (exhibit 3). Creditors of your petitioner owning more than fifty-one per centum (51%) of the amount of securities affected by the plan, exclusive of those owned, held or controlled by the petitioner, have filed their consents in writing to such plan of composition and readjustment and to the filing of this petition.

Wherefore, your petitioner prays that this petition may be held to have been filed in good faith and that it may be approved as properly filed under the terms and provisions of Sections 81, 82, 83 and 84 of Chapter Nine of the Acts of Congress, relating to Bankruptcy; and that an

order be entered fixing a time and place for a hearing on this petition, and prescribing a form of notice to creditors and directing that notice be given to creditors of the filing of the petition and its approval as properly filed, and of the time and place of the hearing; that pending the determination of this matter the Court may enjoin and stay the commencement or continuation of any and all suits against your petitioner on account of the securities affected by the plan of composition, and also to enjoin or stay the commencement or continuation of any proceeding to enforce the levy of taxes for the payment of securities affected by such plan of composition; that an interlocutory decree may be entered herein providing that the plan shall be temporarily operative with respect to all securities affected by the plan, and that all further proceedings and decrees may be had herein as are or may be provided for in the aforesaid Sections 81, 82, 83 and 84 of Chapter Nine of the Acts of Congress relating to bankruptcy.

THE CITY OF CORAL GABLES,
By PAUL W. McGARRY,
Mayor.

(Corp Seal)

Attest:
G. N. SHAW,
City Clerk.
MORTON B. ADAMS,
City Attorney.

REDFEARN & FERRELL,
By D. H. REDFEARN,
IRA C. HAYCOCK,
Of Counsel for Petitioner.

State of North Carolina,
County of Henderson.

Paul D. McGarry, being first duly sworn, on oath deposes and says: that he is Mayor of The City of Coral

Gables, Dade County, Florida, petitioner; that he has read the above and foregoing Petition, and that the matters and things therein alleged are true.

Dated at Hendersonville, County of Henderson, State of North Carolina, this 26th day of June, A. D. 1940.

PAUL W. McGARRY,
Mayor.

Subscribed and Sworn to before me this 26th day of June, A. D. 1940.

VERA ORR,
(N. P. Seal) Notary Public.

My Commission expires: October 17, 1940.

State of Florida,
County of Dade.

G. N. Shaw, being first duly sworn, on oath deposes and says: that he is City Clerk of The City of Coral Gables, Dade County, Florida, petitioner; that he has read the above and foregoing Petition, and that the matters and things therein alleged are true.

Dated at Miami, Dade County, Florida, this 27th day of June, A. D. 1940.

G. N. SHAW,
(Corp. Seal) City Clerk.

Subscribed and Sworn to before me this 27th day of June, A. D. 1940.

EILEEN E. GRAHAM,
(N. P. Seal) Notary Public, state of Florida at Large.

My Commission expires: 9/3/42.

On January 27, 1940 Petitioner's Exhibits C, D, 1, 2, 3 and 4 to Petition for Composition of Debts, were filed in words and figures as follows, to-wit:

EXHIBIT C.

Date of Issue .....
Nature of Issue .....
Interest rate per annum.....

List of Original Bonds or Debts, and Accrued and Unpaid Interest to January 1, 1937, not exchanged for the Refunding Issues and not Consenting to or Accepting the Plan of Composition, showing last known owner.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Identified With Bonds Which Have Been Refunded	Aggregate Identified With Bonds Bonds Still Unrefunded	Identified With Bonds Bonds Still Unrefunded
Summary—Exhibit "C."						
Date of Issue						
12-1-25 In Original Form			$44,000.00	$ 550.00	$ 8,369.02	.....
12-1-25 In Judgment			30,000.00	6,600.00	8,584.58	$2,277.90
4-1-26 In Original Form			14,000.00	550.00	2,763.75	1,388.75
4-1-26 In Judgment			3,000.00	.....	247.50	618.75
7-1-26 In Original Form			14,000.00	720.00	3,120.00	1,350.00
7-1-26 In Judgment			93,000.00	1,320.00	25,260.00	5,280.00

1-1-27 In Original Form	212,000.00	8,430.00	75,360.00	1,560.00
1-1-27 In Judgment	28,000.00	2,280.00	4,170.00	3,660.00
6-1-28 In Original Form	3,000.00	150.00	825.00	.....
6-15-28 In Original Form	30,000.00	150.00	9,915.00	.....
6-1-29 In Original Form	5,000.00	.....	1,225.00	.....
1-1-30 In Original Form	1,000.00	360.00	130.00	290.00
7-1-30 In Original Form	3,000.00	.....	1,080.00	.....
Total in Original Form	$326,000.00	$10,910.00	$102,787.77	$ 4,588.75
Total in Judgments	154,000.00	10,200.00	38,262.08	11,836.65
Total as to Bonds and Interest Thereon	480,000.00	21,110.00	141,049.85	16,425.40
Total Judgments for Debts Other Than Bonds (Payable Only From Non-Homestead Exempt Property)	1,039.93	.....	.....	190.46
Total All Unrefunded Debt, as of January 1, 1937, Value	$481,039.93	$21,110.00	$141,049.85	$16,615.86

Unrefunded Items in Judgments:		
Bonds	$154,000.00	
Interest Coupons	48,462.08	
Other Interest	11,836.65	$214,298.73
Unrefunded Items in Original Form:		
Bonds	326,000.00	
Interest Coupons	113,697.77	
Other Interest	4,588.75	444,286.52
		658,585.25
Unrefunded Judgments for Debts Other Than Bonds and Interest Thereon:		
Judgments	1,039.93	
Interest	190.46	1,230.39
Total		$659,815.64

Date of Issue December 1, 1925.
Nature of Issue General Improvement.
Interest rate per annum 5½%.

List of Original Bonds or Debts, and Accrued and Unpaid Interest to January 1, 1937, not exchanged for the Refunding Issues and not Consenting to or Accepting the Plan of Composition, showing last known owner.

1	2	3	4	5 Interest Coupons Due But Unpaid to January 1, 1937		7 Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	6 Aggregate Amount	
T. B. Cox, Route 1, Concord, Tennessee	18-19	.....	.....	10	$55.00	.....
Unknown	31	.....	.....	12	27.50	.....
American National Bank of Nashville, Tennessee ...	140	12-1-1939	$1,000.00	12/22		
				1/6th of 23	307.08	.....
Unknown	146/150	12-1-1940	5,000.00	22		
				1/6th of 23	160.40	.....
Unknown	160/161	.....	.....	10	55.00	.....
Unknown	166/170	12-1-1941	5,000.00	22		
				1/6th of 23	160.40	.....
American National Bank of Nashville, Tennessee ...	182/183	12-1-1942	2,000.00	12/22		
				1/6th of 23	614.16	.....

Note: The symbol "/" indicates a series of numbers with both stated numbers inclusive.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	
Unknown	184	.....	.....	12	27.50	.....
American National Bank of Nashville, Tennessee ...	185	12-1-1942	1,000.00	12/22		
				1/6th of 23	307.08	.....
Unknown	186/190	12-1-1942	5,000.00	22		
				1/6th of 23	160.40	.....
American National Bank of Nashville, Tennessee ...	199	12-1-1943	1,000.00	12/22		
				1/6th of 23	307.08	.....
Unknown	200/202	.....	.....	12	82.50	.....
Unknown	203/204	12-1-1943	2,000.00	10/22		
				1/6th of 23	724.16	.....
Unknown	205	.....	.....	12	27.50	.....
Unknown	206/210	12-1-1943	5,000.00	22		
				1/6th of 23	160.40	.....
Unknown	219/220	.....	.....	12	55.00	.....
Unknown	223/224	.....	.....	12	55.00	.....

American National Bank of Nashville, Tennessee ...	233/234	12-1-1944	2,000.00	10/22 1/6th of 23	724.16	.....
American National Bank of Nashville, Tennessee ...	251/255	12-1-1945	5,000.00	13/22 1/6th of 23	1,397.90	.....
Unknown	270	12-1-1946	1,000.00	12/22 1/6th of 23	307.08	.....
Unknown	280	12-1-1946	1,000.00	12/22 1/6th of 23	307.08	.....
American National Bank of Nashville, Tennessee ...	281/285	12-1-1946	5,000.00	10/22 1/6th of 23	1,810.40	.....
Unknown	294/295	12-1-1946	2,000.00	12/22 1/6th of 23	614.16	.....
Unknown	306	12-1-1947	1,000.00	12/22 1/6th of 23	307.08	.....
Unknown	307/308	.....	.....	10/12	165.00	.....
Total			$44,000.00		$8,919.02	

Note: The symbol "/" indicates a series of numbers with both stated numbers inclusive.

Date of Issue April 1, 1926.
Nature of Issue General Improvement.
Interest rate per annum 5½%.

List of Original Bonds or Debts, and Accrued and Unpaid Interest to January 1, 1937, not exchanged for the Refunding Issues and not Consenting to or Accepting the Plan of Composition, showing last known owner.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	
Unknown	568/571	4-1-1932	$4,000.00	12	$110.00	$1,045.00
Unknown	572	4-1-1932	1,000.00	11-12	55.00	261.25
Unknown	574/582	.....	.....	11	247.50	.....
Unknown	592/595	.....	.....	11	110.00	.....
Unknown	609/610	4-1-1936	2,000.00	9/20	660.00	82.50
Unknown	614	.....	.....	11	27.50	.....
Unknown	626/629	.....	.....	11	110.00	.....
Unknown	632	.....	.....	11	27.50	.....
Unknown	761	4-1-1946	1,000.00	9/21		
				½ of 22	371.25	.....
Unknown	762	.....	.....	11	27.50	.....
Unknown	786/787	4-1-1947	2,000.00	18/21		
				½ of 22	247.50	.....

Unknown	884/885	4-1-1952	2,000.00	12/21 ½ of 22	577.50	.....
Unknown	998	4-1-1956	1,000.00	9/21 ½ of 22	$371.25	.....
Unknown	1000	4-1-1956	1,000.00	9/21 ½ of 22	$371.25	.....
Total			$14,000.00		$3,313.75	$1,388.75

Date of Issue July 1, 1926.
Nature of issue Special Assessment.
Interest rate per annum 6%.

List of Original Bonds or Debts, and Accrued and Unpaid Interest to January 1, 1937, not exchanged for the Refunding Issues and not Consenting to or Accepting the Plan of Composition, showing last known owner.

1	2	3	4	5 Interest Coupons Due But Unpaid to January 1, 1937		7 Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	
Unknown	391	7-1-1930	$1,000.00	..	.....	$390.00
Unknown	578	.....	.....	8	$30.00	.....
Unknown	595	.....	.....	10	30.00	.....
Unknown	608/610	.....	.....	11	90.00	.....
Unknown	695/697	7-1-1932	3,000.00	8/12	450.00	810.00

Note: The symbol "/" indicates a series of numbers with both stated numbers inclusive.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	Amount
Unknown	911/915	.....	.....	10	150.00	.....
Unknown	1004	.....	.....	12	30.00	.....
Unknown	1066	7-1-1934	1,000.00	13/16	120.00	150.00
Unknown	1566	7-1-1937	1,000.00	10/21	360.00	.....
Unknown	1585	7-1-1937	1,000.00	10/21	360.00	.....
Unnkown	1618/1622	7-1-1938	5,000.00	11/16		
				18/21	1,500.00	.....
Unknown	1652-1653	.....	.....	10	60.00	.....
Unknown	1654	7-1-1938	1,000.00	10/16		
				18/21	330.00	.....
Unknown	1655/1656	.....	.....	10	60.00	.....
Unknown	1674	.....	.....	10	30.00	.....
Unknown	1676	.....	.....	10	30.00	.....
Unknown	1713/1717	.....	.....	10	150.00	.....
Unknown	1738/1739	.....	.....	11	60.00	.....
Unknown	1769	7-1-1938	1,000.00		.....	.....
Total			$14,000.00		$3,840.00	$1,350.00

Date of Issue January 1, 1927.
Nature of Issue General Improvement.
Interest rate per annum 6%.

List of Original Bonds or Debts, and Accrued and Unpaid Interest to January 1, 1937, not exchanged for the Refunding Issues and not Consenting to or Accepting the Plan of Composition, showing last known owner.

1	2	3	4	5 Interest Coupons Due But Unpaid to January 1, 1937		6 Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Bond Numbers	Aggregate Amount	
Unknown	101	.....	.....	6	$30.00	.....
American National Bank of Nashville, Tennessee ...	169/171	1-1-1931	$3,000.00	7-8	180.00	$1,080.00
American National Bank of Nashville, Tennessee ...	179	1-1-1931	1,000.00	7-8	60.00	360.00
Unknown	229	.....	.....	10	30.00	.....
Unknown	233/234	.....	.....	10	60.00	.....
Unknown	273/282	.....	.....	10	300.00	.....
Unknown	283	.....	.....	7: 10	60.00	.....
Unknown	284/288	.....	.....	10	150.00	.....
Unknown	362	.....	.....	7: 8	60.00	.....
Unknown	417/424	.....	.....	10	240.00	.....
Unknown	496	.....	.....	7	30.00	.....
Unknown	548	.....	.....	10	30.00	.....

Note: The symbol "/" indicates a series of numbers with both stated numbers inclusive.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	
American National Bank of Nashville, Tennessee ...	677	1-1-1936	1,000.00	10/18	270.00	60.00
Unknown	792	1-1-1936	1,000.00	8/18	330.00	60.00
Unknown	804	.....	.....	10	30.00	.....
Unknown	806/811	.....	.....	10	180.00	.....
Unknown	813/818	.....	.....	10	180.00	.....
Unknown	825	.....	.....	10	30.00	.....
Unknown	833; 834	.....	.....	10	60.00	.....
American National Bank of Nashville, Tennessee ...	839/841	1-1-1937	3,000.00	8/20	1,170.00	.....
Unknown	845/849	.....	.....	10	150.00	.....
Unknown	1053	.....	.....	7	30.00	.....
American National Bank of Nashville, Tennessee ...	1054/1058	1-1-1938	5,000.00	10/20	1,650.00	.....
American National Bank of Nashville, Tennessee ...	1064	1-1-1938	1,000.00	10/20	330.00	.....
American National Bank of Nashville, Tennessee ...	1119	1-1-1939	1,000.00	10/20	330.00	.....

Unknown	1179/1181	.....	.....	10	90.00	.....
Unknown	1184/1185	.....	.....	10	60.00	.....
Unknown	1233/1234	1-1-1939	2,000.00	7/20	840.00	.....
Unknown	1262/1266	.....	.....	10	150.00	.....
American National Bank of Nashville, Tennessee	1323/1325	1-1-1940	3,000.00	10/20	990.00	.....
Unknown	1347	1-1-1940	1,000.00	7/20	420.00	.....
American National Bank of Nashville, Tennessee	1348	1-1-1940	1,000.00	19/20	60.00	.....
American National Bank of Nashville, Tennessee	1424/1426	1-1-1940	3,000.00	10/20	990.00	.....
Unknown	1428/1429	1-1-1940	2,000.00	7/20	840.00	.....
Unknown	1436	1-1-1940	1,000.00	10/20	330.00	.....
Unknown	1447/1451	.....	.....	10	150.00	.....
American National Bank of Nashville, Tennessee	1491	1-1-1941	1,000.00	10/20	330.00	.....
Unknown	1527/1530	1-1-1941	4,000.00	7/20	1,680.00	.....
Unknown	1533	1-1-1941	1,000.00	7/20	420.00	.....
American National Bank of Nashville, Tennessee	1534/1536	1-1-1941	3,000.00	7/20	1,260.00	.....
Unknown	1539	1-1-1941	1,000.00	10/20	330.00	.....

Note: The symbol "/" indicates a series of numbers with both stated numbers inclusive.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Numbers	Maturity	Principal Amount	Numbers	Aggregate Amount	
American National Bank of Nashville, Tennessee ...	1579/1580	1-1-1941	2,000.00	10/20	660.00	.....
American National Bank of Nashville, Tennessee ...	1625	1-1-1941	1,000.00	10/20	330.00	.....
American National Bank of Nashville, Tennessee ...	1626/1630	1-1-1941	5,000.00	7/20	2,100.00	.....
American National Bank of Nashville, Tennessee ...	1637/1641	1-1-1941	5,000.00	7/20	2,100.00	.....
Unknown	1642/1651	1-1-1941	10,000.00	10/20	3,300.00	.....
Unknown	1687/1696	1-1-1941	10,000.00	10/20	3,300.00	.....
American National Bank of Nashville, Tennessee ...	1707/1715	1-1-1942	9,000.00	10.20	2,970.00	.....
Unknown	1744/1746	.....	.....	10	90.00	.....
Unknown	1849/1850	.....	.....	8	60.00	.....
American National Bank of Nashville, Tennessee ...	1898/1899	1-1-1942	2,000.00	10/20	660.00	.....
Unknown	2032/2046	.....	.....	11	450.00	.....
American National Bank of Nashville, Tennessee ...	2192	1-1-1944	1,000.00	10/20	330.00	.....

American National Bank of Nashville, Tennessee ...	2256	1-1-1944	1,000.00	10/20	330.00	.....
American National Bank of Nashville, Tennessee ...	2274	1-1-1944	1,000.00	7; 10/20	360.00	.....
Unknown	2286	.....	.....	10	30.00	.....
Unknown	2301	.....	.....	7	30.00	.....
Unknown	2355	.....	.....	1	30.00	.....
Unknown	2362	1-1-1944	1,000.00	10/20	330.00	.....
Unknown	2375/2376	.....	.....	7	60.00	.....
Unknown	2378	.....	.....	7	30.00	.....
Unknown	2386	1-1-1944	1,000.00	7/20	420.00	.....
Unknown	2419/2421	.....	.....	10	90.00	.....
American National Bank of Nashville, Tennessee ...	2582	1-1-1945	1,000.00	10/20	330.00	.....
American National Bank of Nashville, Tennessee ...	2650/2652	1-1-1946	3,000.00	10/20	990.00	.....
Unknown	2681/2682	.....	.....	10	60.00	.....
Unknown	2692/2694	.....	.....	10	90.00	.....
Unknown	2700	1-1-1946	1,000.00	7/20	420.00	.....
Unknown	2707	.....	.....	7	30.00	.....
Unknown	2766	.....	.....	7	30.00	.....
Unknown	2798/2799	1-1-1946	2,000.00	7/20	840.00	.....

Note: The symbol "/" indicates a series of numbers with both stated numbers inclusive.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	
American National Bank of Nashville, Tennessee ...	2815	1-1-1946	1,000.00	10/20	330.00	.....
Unknown	2908/2909	.....	.....	7-8	120.00	.....
Unknown	2921/2922	.....	.....	7	60.00	.....
Unknown	2923/2925	.....	.....	7-8	180.00	.....
American National Bank of Nashville, Tennessee ...	2940	1-1-1947	1,000.00	10/20	330.00	.....
American National Bank of Nashville, Tennessee ...	2950	1-1-1947	1,000.00	10/20	330.00	.....
American National Bank of Nashville, Tennessee ...	2984/2985	1-1-1947	2,000.00	10/20	660.00	.....
Unknown	2990/2991	.....	.....	7	60.00	.....
American National Bank of Nashville, Tennessee ...	2992	1-1-1947	1,000.00	7-10/20	360.00	.....
American National Bank of Nashville, Tennessee ...	2994	1-1-1947	1,000.00	7-10/20	360.00	.....
Unknown	3011/3014	.....	.....	7-8	240.00	.....
American National Bank of Nashville, Tennessee ...	3017/3020	1-1-1947	4,000.00	10/20	1,320.00	.....

American National Bank of Nashville, Tennessee ...	3055	1-1-1947	1,000.00	10/20	330.00	.....
Unknown	3059	.....	.....	10	30.00	.....
American National Bank of Nashville, Tennessee ...	3064/3065	1-1-1947	2,000.00	10/20	660.00	.....
Unknown	3076/3080	.....	.....	10	150.00	.....
Unknown	3071/3080	1-1-1947	10,000.00	7/20	4,200.00	.....
American National Bank of Nashville, Tennessee ...	3205/3207	1-1-1947	3,000.00	10/20	990.00	.....
Unknown	3226	.....	.....	10	30.00	.....
Unknown	3228	.....	.....	10	30.00	.....
Unknown	3238	.....	.....	7-8	60.00	.....
Unknown	3301/3302	1-1-1948	2,000.00	7/20	840.00	.....
Unknown	3315	1-1-1948	1,000.00	7/20	420.00	.....
Unknown	3360/3364	.....	.....	7/9	450.00	.....
Unknown	3388/3390	.....	.....	7/9	270.00	.....
American National Bank of Nashville, Tennessee ...	3422/3423	1-1-1949	2,000.00	10/20	660.00	.....
Unknown	3425	.....	.....	7	30.00	.....
Unknown	3447/3449	.....	.....	10	90.00	.....
Unknown	3451	.....	.....	5-6	60.00	.....
Unknown	3556/3570	.....	.....	7	450.00	.....

Note: The symbol "/" indicates a series of numbers with both stated numbers inclusive.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	
Unknown	3578/3582	.....	.....	7	150.00	.....
Unknown	3627/3628	1-1-1951	2,000.00	7/20	840.00	.....
Unknown	3637	.....	.....	7	30.00	.....
Unknown	3678/3692	.....	.....	7	450.00	.....
Unknown	3729	.....	.....	9	30.00	.....
American National Bank of Nashville, Tennessee	3730/3740	1-1-1952	11,000.00	9/20	3,960.00	.....
American National Bank of Nashville, Tennessee	3741	1-1-1952	1,000.00	10/20	330.00	.....
Unknown	3744	.....	.....	9	30.00	.....
American National Bank of Nashville, Tennessee	3745/3747	1-1-1952	3,000.00	9/20	1,080.00	.....
Unknown	3749/3750	.....	.....	9	60.00	.....
American National Bank of Nashville, Tennessee	3751	1-1-1952	1,000.00	9/20	360.00	.....
Unknown	3752/3768	.....	.....	9	510.00	.....
Unknown	3774/3779	.....	.....	9	180.00	.....
Unknown	3796/3798	.....	.....	9	90.00	.....

American National Bank of Nashville, Tennessee ...	3810/3819	1-1-1952	10,000.00	10/20	3,300.00	.....	
American National Bank of Nashville, Tennessee ...	3823/3826	1-1-1952	4,000.00	10/20	1,320.00	.....	
American National Bank of Nashville, Tennessee ...	3828/3831	1-1-1952	4,000.00	10/20	1,320.00	.....	
American National Bank of Nashville, Tennessee ...	3832/3833	1-1-1952	2,000.00	9/20	720.00	.....	
American National Bank of Nashville, Tennessee ...	3834/3842	1-1-1952	9,000.00	10/20	2,970.00	.....	
American National Bank of Nashville, Tennessee ...	3853/3854	1-1-1953	2,000.00	10/20	660.00	.....	35
American National Bank of Nashville, Tennessee ...	3887	1-1-1953	1,000.00	19-20	60.00	.....	
Unknown	3889	.....	.....	7	30.00	.....	
Unknown	3930/3935	.....	.....	9	180.00	.....	
Unknown	3937/3951	.....	.....	9	450.00	.....	
Unknown	3981/3983	1-1-1954	3,000.00	10/20	990.00	.....	
Unknown	4006/4007	1-1-1954	2,000.00	7/20	840.00	.....	
American National Bank of Nashville, Tennessee ...	4013	1-1-1954	1,000.00	10/20	330.00	.....	

Note: The symbol "/" indicates a series of numbers with both stated numbers inclusive.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	
American National Bank of Nashville, Tennessee ...	4030	1-1-1954	1,000.00	7/20	420.00	.....
Unknown	4050/4052	.....	.....	7	90.00	.....
Unknown	4054/4055	.....	.....	7	60.00	.....
Unknown	4108/4109	.....	.....	7-8	120.00	.....
Unknown	4112	1-1-1954	1,000.00	7/20	420.00	.....
American National Bank of Nashville, Tennessee ...	4224	1-1-1954	1,000.00	7/20	420.00	.....
American National Bank of Nashville, Tennessee ...	4227/4228	1-1-1955	2,000.00	7/20	840.00	.....
American National Bank of Nashville, Tennessee ...	4239	1-1-1955	1,000.00	7/20	420.00	.....
Unknown	4242/4245	.....	.....	10	120.00	.....
Unknown	4247/4251	.....	.....	10	150.00	.....
American National Bank of Nashville, Tennessee ...	4252/4253	1-1-1955	2,000.00	7/20	840.00	.....
American National Bank of Nashville, Tennessee ...	4259/4260	1-1-1956	2,000.00	10/20	660.00	.....

American National Bank of Nashville, Tennessee ...	4263/4272	1-1-1956	10,000.00	7/20	4,200.00	.....
American National Bank of Nashville, Tennessee ...	4283	1-1-1956	1,000.00	7/20	420.00	.....
American National Bank of Nashville, Tennessee ...	4335	1-1-1956	1,000.00	7/20	420.00	.....
American National Bank of Nashville, Tennessee ...	4347/4350	1-1-1956	4,000.00	7/20	1,680.00	.....
American National Bank of Nashville, Tennessee ...	4372	1-1-1956	1,000.00	10/20	330.00	.....
Unknown	4382	.....	.....	9	30.00	.....
Unknown	4400	.....	.....	7	30.00	.....
Unknown	4401	.....	.....	7	30.00	.....
Unknown	4495	1-1-1957	1,000.00	7/20	420.00	.....
Unknown	4498	1-1-1957	1,000.00	7/20	420.00	.....
Unknown	4499	.....	.....	7/10	120.00	.....
Total			212,000.00		83,790.00	1,560.00

Date of Issue June 1, 1928.

Nature of Issue Special Assessment-Refunding.

Interest rate per annum 6%.

List of Original Bonds or Debts, and Accrued and Unpaid Interest to January 1, 1937, not exchanged for the Refunding Issues and not Consenting to or Accepting the Plan of Composition, showing last known owner.

Note: The symbol "/" indicates a series of numbers with both stated numbers inclusive.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	
Unknown	1/5	.....	.....	4	$150.00	.....
Unknown	155/157	6-1-38	$3,000.00	9/17	825.00	.....
Total			3,000.00		975.00	

Date of Issue June 15, 1928.
Nature of Issue Revenue Refunding.
Interest rate per annum 6%.

List of Original Bonds or Debts, and Accrued and Unpaid Interest to January 1, 1937, not exchanged for the Refunding Issues and not Consenting to or Accepting the Plan of Composition, showing last known owner.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	
Unknown	291/295	.....	.....	7	$ 150.00	.....
American National Bank of Nashville, Tennessee ...	303/307	6-15-1940	$5,000.00	8/17 1/12th of 18	1,512.50	.....

American National Bank of Nashville, Tennessee ...	356/363	6-15-1942	8,000.00	7/17 1/12th of 18	2,660.00	.....
American National Bank of Nashville, Tennessee ...	369/370	6-15-1942	2,000.00	7/17 1/12th of 18	665.00	.....
Unknown	552/553	6-15-1947	2,000.00	4/17 1/12th of 18	845.00	.....
American National Bank of Nashville, Tennessee ...	689/691	6-15-1950	3,000.00	8/17 1/12th of 18	907.50	.....
American National Bank of Nashville, Tennessee ...	833/842	6-15-1950	10,000.00	7/17 1/12th of 18	3,325.00	.....
Total			30,000.00		10,065.00	.....

Date of Issue June 1, 1929.
Nature of Issue Special Assessment Refunding.
Interest rate per annum 6%.

List of Original Bonds or Debts, and Accrued and Unpaid Interest to January 1, 1937, not exchanged for the Refunding Issues and not Consenting to or Accepting the Plan of Composition, showing last known owner.

Note: The symbol "/" indicates a series of numbers with both stated numbers inclusive.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	
Unknown	116/120	6-1-1938	$5,000.00	8/15 1/6th of 16		
Total			$5,000.00		$1,225.00	.....

Date of Issue January 1, 1930.
Nature of Issue General Improvement Refunding.
Interest rate per annum 6%.

List of Original Bonds or Debts, and Accrued and Unpaid Interest to January 1, 1937, not exchanged for the Refunding Issues and not Consenting to or Accepting the Plan of Composition, showing last known owner.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	
Unknown	1	9-1-31	$1,000.00	1/4	$130.00	$290.00
Unknown	4	.....	.....	1	40.00	.....
Unknown	7	.....	.....	1	40.00	.....
Unknown	10	.....	.....	1	40.00	.....
Unknown	13	.....	.....	1	40.00	.....
Unknown	16	.....	.....	1	40.00	.....
Unknown	19	.....	.....	1	40.00	.....

Unknown	22	.....	.....	1	40.00	.....
Unknown	37	.....	.....	1	40.00	.....
Unknown	52	.....	.....	1	40.00	.....
Total			$1,000.00		$490.00	$290.00

Date of Issue July 1, 1930.
Nature of Issue Special Assessment Refunding.
Interest rate per annum 6%.

List of Original Bonds or Debts, and Accrued and Unpaid Interest to January 1, 1937, not exchanged for the Refunding Issues and not Consenting to or Accepting the Plan of Composition, showing last known owner.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	
Unknown	79/80	7-1-1948	$2,000.00	1/13	$780.00	.....
Unknown	86	7-1-1949	1,000.00	4/13	300.00	.....
Total			$3,000.00		$1,080.00	.....

Date March 11, 1937.
Nature Judgment.
Interest rate per annum 5%.

List of Original Bonds or Debts, and Accrued and Unpaid Interest to January 1, 1937, not exchanged for the Refunding Issues and not Consenting to or Accepting the Plan of Composition, showing last known owner.

Note: The symbol "/" indicates a series of numbers with both stated numbers inclusive.

1 Last Known Owner	2 Bond Numbers	3 Date of Maturity	4 Principal Amount	5 Interest Coupons Due But Unpaid to January 1, 1937 Numbers	6 Aggregate Amount	7 Other Accrued But Unpaid Interest to January 1, 1937, Amount
Augustus T. Ashton, U. S. Distr. Ct., Miami Civil No. 2441, dated July 17, 1937, in the amount of $13,771.35, including interest to date thereof, and interest on past due interest, which judgment was based upon the following refundable bonds and interest:		Last Known Owner: Augustus T. Ashton, c/o W. Terry Gibson, Atty., 209 S. Olive Street, West Palm Beach, Florida.				
—o—						
Issue of April 1, 1926	576	4-1-1933	$1,000.00	12/14	$ 82.50	$206.25
General Improvement 5½%	579/580	4-1-1933	2,000.00	12/14	165.00	412.50
Issue of July 1, 1926 Special Assessment 6%	532	7-1-1931	1,000.00			330.00

Issue of January 1, 1927					
General Improvement	112/113	1-1-1931	2,000.00		720.00
6%	117	1-1-1931	1,000.00		360.00
	177	1-1-1931	1,000.00		360.00
	178	1-1-1931	1,000.00		360.00
	182	1-1-1931	1,000.00		360.00
Total			$10,000.00	$247.50	$3,108.75

There has been paid upon the above, under peremptory writs for special tax levies for the years 1937, 1938 and 1939, the sum of $8,521.76

Date July 26, 1937.
Nature Judgment.
Interest rate per annum 3%.

List of Original Bonds or Debts, and Accrued and Unpaid Interest to January 1, 1937, not exchanged for the Refunding Issues and not Consenting to or Accepting the Plan of Composition, showing last known owner.

Note: The symbol "/" indicates a series of numbers with both stated numbers inclusive.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	
Fiduciary Counsel, Inc., U. S. Distr. Court Miami Civil No. 2442, dated July 26, 1937, in the amount of $130,855.85, including interest to date thereof and interest upon past due interest, which judgment was based upon the following refundable bonds and interest:		Last Known Owner: Fiduciary Counsel, Inc., c/o W. Terry Gibson, Atty., 209 S. Olive Street, West Palm Beach, Florida.				
—o—						
Issue of July 1, 1926	624	7-1-1932	$1,000.00	11-12	$ 60.00	$270.00
Special Assessment	635	7-1-1932	1,000.00	11-12	60.00	270.00
60%	737	7-1-1932	1,000.00	11-12	60.00	270.00
	1216/1217	7-1-1935	2,000.00	11/16-18	420.00	180.00
	1226	7-1-1935	1,000.00	11/16-18	210.00	90.00
	1228/1232	7-1-1935	5,000.00	11/16-18	1,050.00	450.00

	1237	7-1-1935	1,000.00	11/16-18	210.00	90.00
	1238/1240	7-1-1935	3,000.00	11/18	720.00	270.00
	1268/1271	7-1-1936	4,000.00	11/20	1,200.00	120.00
	1286/1290	7-1-1936	5,000.00	11/20	1,500.00	150.00
	1296/1320	7-1-1936	25,000.00	11/20	7,500.00	750.00
	1335/1336	7-1-1936	2,000.00	11/20	600.00	60.00
	1348	7-1-1936	1,000.00	11/20	300.00	30.00
	1366	7-1-1936	1,000.00	11/20	300.00	30.00
	1378/1382	7-1-1936	5,000.00	11/20	1,500.00	150.00
	1388/1407	7-1-1936	20,000.00	11/20	6,000.00	600.00
	1733			11/21	330.00	
	1746/1747			11/21	660.00	
Issue of January 1, 1927						
General Improvement	634/638	1-1-1935	5,000.00	14/16	450.00	600.00
6%	647/651	1-1-1935	5,000.00	14/16	450.00	600.00
	845/846	1-1-1937	2,000.00	14/20	420.00	
	2344/2345			11/20	600.00	
	2349			11/20	300.00	
	2352/2353			11/20	600.00	
	3609/3610			14/20	420.00	
Total			$90,000.00		$25,920.00	$4,980.00

Note: The symbol "/" indicates a series of numbers with both stated numbers inclusive.

There has been paid upon the above, under peremptory writs for special tax levies for the years 1937, 1938 and 1939, the sum of $48,642.76

Date of issue August 16, 1936 & December 1, 1937.
Nature Judgment & Agreement.
Interest rate per annum 5½%.

List of Original Bonds or Debts, and Accrued and Unpaid Interest to January 1, 1937, not exchanged for the Refunding Issues and not Consenting to or Accepting the Plan of Composition, showing last known owner.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	Other Accrued But Unpaid Interest to January 1, 1937, Amount
C. J. Root, U. S. Distr. Ct. Miami Civil No. 2333, dated August 16, 1936, in amount of $34,734.30, including interest to date thereof and interest on past due interest, which						

Last Known Owner:
C. J. Root,
c/o Jennings & Watts, Attys.,
1001-7 Barnett National Bank Bldg.,
Jacksonville, Florida.

judgment was based upon the following refundable bonds and interest:

—o—

Issue of December 1, 1925 General Improvement 5½%	23/25	12-1-1931	$3,000.00	10/12	$ 247.50	$838.75
	34/25	12-1-1932	2,000.00	10/14	275.00	449.16
	4345	12-1-1933	3,000.00	10/16	577.50	508.75
	54/55	12-1-1934	2,000.00	10/18	495.00	229.16
	64/67	12-1-1935	4,000.00	10/20	1,210.00	238.33
	146/150			10/21	1,650.00	
	166/170			10/21	1,650.00	
	186/190			10/21	1,650.00	
	206/210			10/21	1,650.00	
Total.....			$14,000.00		$9,405.00	$2,264.15

and

Agreement between C. J. Root and The City of Coral Gables, dated December 1, 1937, consolidating said judgment with the following bonds

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	
and interest coupons owned by C. J. Root, and further interest on said bonds to date of said agreement:						
—o—						
	80/82	12-1-1936	3,000.00	10/22	1,072.50	13.75
Issue of December 1, 1925	95/98	12-1-1937	4,000.00	1/6th/23 10/22	1,448.33	
General Improvement	110/113	12-1-1938	4,000.00	1/6th/23 10/22	1,448.33	
5½%	126/130	12-1-1939	5,000.00	1/6th/23 10/22	1,810.42	
Total			16,000.00		5,779.58	13.75
Grand Total			$30,000.00		$15,184.58	$2,277.90
There has been paid upon the above, under peremptory writs and agreed tax levies for the years 1938 and 1939, the sum of	$13,728.77					

Date April 13, 1938.
Nature Judgment.
Interest rate per annum 3½%.

List of Original Bonds or Debts, and Accrued and Unpaid Interest to January 1, 1937, not exchanged for the Refunding Issues and not Consenting to or Accepting the Plan of Composition, showing last known owner.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	
Lois Harmon, U. S. Distr. Ct. Miami Civil No. 2466, issued April 13, 1938, in the amount of $7,265.90, including interest to date thereof and interest on past due interest, which judgment was based upon the following refundable bonds and interest:		Last Known Owner: Jeanette S. Conklin, 111 Broadway, New York City.				
—o—						
Issue of July 1, 1926 Special Assessment 6%	1769			14/19	$ 180.00	

Note: The symbol "/" indicates a series of numbers with both stated numbers inclusive.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner Issue of January 1, 1927	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	
General Improvement	874/878	1-1-1937	$5,000.00	14/20	1,050.00	
6%	1348			13/18	180.00	
	3887			13/18	180.00	
Total			$5,000.00		$1,590.00	

There has been paid upon the above, under peremptory writs for special tax levies for the years 1938 and 1939 the sum of $4,030.76

Date March 11, 1937.
Nature Judgment.
Interest rate per annum 5%

List of Original Bonds or Debts, and Accrued and Unpaid Interest to January 1, 1937, not exchanged for the Refunding Issues and not Consenting to or Accepting the Plan of Composition, showing last known owner.

W. J. Noel, U. S. Distr. Ct. Miami Civil No. 2375, dated March 11, 1937, in amount of $19,365.66, including interest to date thereof and interest on past due interest, which judgment was based upon the following refundable bonds and interest:

Last Known Owner:
W. J. Noel,
c/o Peters & Kemp, Attys.,
Congress, Bldg.,
Miami, Florida.

—o—

Issue of July 1, 1926 Special Assessment 6%	1218/1225	7-1-1935	$8,000.00	9/18	$2,400.00	$720.00
Issue of January 1, 1927 General Improvement 6%	770/774	1-1-1936	5,000.00	7/18	1,800.00	300.00
Total			$13,000.00		$4,200.00	$1,020.00

Note: The symbol "/" indicates a series of numbers with both stated numbers inclusive.

There has been paid upon the above, under peremptory writs for special tax levies for the years 1937, 1938 and 1939, the sum of $12,312.74

Date May 16, 1938.
Nature Judgment.
Interest rate per annum 5%

List of Original Bonds or Debts, and Accrued and Unpaid Interest to January 1, 1937, not exchanged for the Refunding Issues and not Consenting to or Accepting the Plan of Composition, showing last known owner.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937, Amount
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	
G. E. Vallette, U. S. Distr. Ct. Miami Civil No. 2512, dated May 16, 1938, in the amount of $8,646.37, including interest to date thereof and interest on						

Last Known Owner:
G. E. Vallette,
c/o Marion S. Sibley, Atty.,
Ingraham Bld.,
Miami, Florida.

past due interest, which judgment was based upon the following refundable bonds and interest:

—o—

Issue of July 1, 1926	890			11-12	60.00	
Special Assessment	894			11-12	60.00	
6%	1196/1198	7-1-1935	3,000.00	13/16-18	450.00	270.00
	1199/1200	7-1-1935	2,000.00	12/16-18	360.00	180.00
	1482	7-1-1937	1,000.00	10/21	360.00	
	1631			12	30.00	
Total			$6,000.00		$1,320.00	$450.00

There has been paid upon the above, under peremptory writs for special tax levies for the years 1938 and 1939, the sum of $3,615.42

Date Various.
Nature Judgments.
Interest rate per annum 6%.

List of Original Bonds or Debts, and Accrued and Unpaid Interest to January 1, 1937, not exchanged for the Refunding Issues and not Consenting to or Accepting the Plan of Composition, showing last known owner.

Note: The symbol "/" indicates a series of numbers with both stated numbers inclusive.

1	2	3	4	5	6	7
				Interest Coupons Due But Unpaid to January 1, 1937		Other Accrued But Unpaid Interest to January 1, 1937, Amoun.
Last Known Owner	Bond Numbers	Date of Maturity	Principal Amount	Numbers	Aggregate Amount	
Connolly, E. B., 4245 N. W. 24th Ave., Miami, Florida:						
Judgment, Circuit Court 11th Judicial Circuit, Dade County, Florida, No. 14418, dated December 9, 1933, 6%			$765.28			$140.34
Maxwell, Parker, c/o Roger Edward Davis, Atty., Shoreland Arcade, Miami, Florida:						
Judgment, Civil Court of Record, Dade County, Florida, No. 13573, dated December 14, 1933, 6%			$274.65			$ 50.12

EXHIBIT D.

Analysis of the outstanding indebtedness of The City of Coral Gables, as of the date of the filing of the attached petition, in terms as to both value and class, of the debt existing on January 1, 1937, the date of the refunding issues.

Payable from levies against all taxable value.

	Debts Exchanged for the Refunding Securities of January 1, 1937			Debts Unexchanged		
	Principal	Interest	Total	Principal	Interest	Total
Bonds of the original issues from December 1, 1925 to July 1, 1930, inc.	$6,982,500.00			$326,000.00		
Interest coupons past due, and interest on past due bonds from maturity to January 1, 1937		2,393,104.21			118,286.52	
Notes Payable	161,037.29			—o—		
Interest on Notes Payable to January 1, 1937		68,786.08			—o—	
Judgments	54,299.35			154,000.00		
Interest on Judgments to January 1, 1937		25,580.92			60,298.73	
	$7,197,836.64*	$2,487,471.21*	$9,685,308.85*	$480,000.00	$178,585.25	$658,582.25

*The above are now evidenced by refunding bonds, first series, issue of January 1, 1937	$3,458,318.00
and by Tax Participation Certificates, first series, issue of January 1, 1937	6,226,989.85
	$9,685,307.85
Of which consents to this petition have been filed by the owners of	$7,291,583.53

Payable from levies against non-homestead exempt taxable value.	Debts Exchanged for the Refunding Securities of January 1, 1937			Debts Unexchanged		
	Principal	Interest	Total	Principal	Interest	Total
Accounts Payable	$95,315.05					
Interest on Accounts Payable, to January 1, 1937		32,199.75				
Judgments				1,039.93		
Interest on Judgments to January 1, 1937					190.46	
	$95,315.05**	$32,199.75**	$127,514.80**	$1,039.93	$190.46	$1,230.39

**The above are now evidenced by refunding bonds, second series issue of January 1, 1937 ..... $20,500.00
and by
Tax Participation Certificates second series, issue of January 1, 1937 ..... 107,014.80

$127,514.80

Of which consents to this petition have been filed by the owners of $107,014.80

Summary.

Debts Exchanged for Refunding Securities:		
Bonds	$6,982,500.00	
Interest on Bonds	2,393,104.21	
Notes Payable	161,037.29	
Interest on Notes Payable	68,786.08	
Judgments	54,299.35	
Interest on Judgments	25,580.92	
Accounts Payable	95,315.05	
Interest on Accounts Payable	32,199.75	$9,812,822.65
Debts Unexchanged:		
Bonds	326,000.00	
Interest on Bonds	118,286.52	
Bonds in Judgments	154,000.00	
Interest on Bonds in Judgment	60,298.73	
Other Judgments	1,039.93	
Interest on Other Judgments	190.46	659,815.64
Total		$10,472,638.29

An Ordinance #269.

Authorizing a Readjustment and Refunding to The Outstanding Indebtedness of The City of Coral Gables by the Issuance of Refunding Bonds and Tax Participation Certificates.

Whereas, The City of Coral Gables has outstanding an indebtedness hereinafter more particularly described, aggregating in principal amount Eight Million Three Hundred Eighty-nine Thousand Seventy-three Dollars and Ninety Cents ($8,389,073.90), upon which unpaid interest accrued to January 1, 1937 will amount to Two Million Eight Hundred Forty-two Thousand Two Hundred Twenty Dollars and Fifteen Cents ($2,842,220.15); and

Whereas, a considerable part of such indebtedness has matured and the balance thereof and additional accruals of interest thereon will mature in such amounts and at such times as to impose upon the City too great a burden for it to meet, and it is in the interests of the City and its creditors that such indebtedness be readjusted and refunded; and

Whereas, it is the desire of the City to readjust and refund said entire indebtedness and interest accruing thereon by issuing in exchange therefor not to exceed $4,200,000 Refunding Bonds and also Tax Participation Certificates as hereafter more particularly prescribed; and

Whereas, such outstanding indebtedness was incurred prior to November 6, 1934 and the holders thereof by virtue of the laws in existence at the time of incurring such indebtedness have the legal right to require that taxes for the payment thereof be levied on all property

subject to taxation at the time such indebtedness was incurred, including homesteads exempted from taxation by the amendment ratified November 6, 1934, adding Section 7 to Article X of the Constitution of Florida, and to require the collection of such taxes in cash at the same time and in the same manner as other taxes levied by the City, and to otherwise enforce their claims and the security therefor independently of any restrictions or limitations upon the enforcement thereof enacted by the State Legislature since November 5, 1934; and

Whereas, a considerable number of such creditors are willing to have the indebtedness owing them readjusted and refunded, on the terms herein set forth;

Now, Therefore, Be It Ordained by the Commission of The City of Coral Gables:

Section 1. It is hereby found and determined that prior to January 1, 1931, The City of Coral Gables duly issued and now has outstanding a bonded indebtedness incurred for municipal purposes in the principal amount of Seven Million Nine Hundred Seventy-seven Thousand Dollars ($7,977,000), upon which unpaid interest accrued to January 1, 1937 will aggregate Two Million Seven Hundred Seven Thousand Nine Hundred Two Dollars and Seventeen Cents ($2,707,902.17), for the payment of which all property within the present territorial limits of The City of Coral Gables, excepting only such property as was exempted from taxation by the Constitution of Florida prior to its amendment on November 6, 1934, is subject to taxation without limitation of rate or amount. Said bonded indebtedness is more particularly described as follows:

Title of Issue	Date of Issue	Principal Amount	Unpaid Interest Accrued to 1/1/37
Permanent Improvement	Dec. 1, 1925	$ 526,000	$ 179,899.67
Permanent Improvement	Apr. 1, 1926	424,000	131,615.00
Improvement	July 1, 1926	1,237,000	417,690.00
Municipal Improvement	Jan. 1, 1927	4,318,000	1,481,080.00
Refunding	June 1, 1928	120,000	40,350.00
Refunding	June 15, 1928	835,000	281,807.50
Refunding	June 1, 1929	154,000	48,410.00
Revenue	July 1, 1929	185,000	66,000.00
Refunding	Jan. 1, 1930	87,000	30,840.00
Refunding	July 1, 1930	91,000	30,210.00

Section 2. It is hereby found and determined that prior to November 6, 1934 The City of Coral Gables duly incurred for municipal purposes and now has outstanding other indebtedness in the principal amount of Four Hundred Twelve Thousand Seventy-three Dollars and Ninety Cents ($412,073.90) upon which unpaid interest accrued to January 1, 1937 will aggregate One Hundred Thirty-four Thousand Three Hundred Seventeen Dollars and Ninety-eight Cents ($134,317.98), for the payment of which all property within the present territorial limits of The City of Coral Gables, excepting only such property as was exempted from taxation by the Constitution of Florida prior to its amendment on November 6, 1934, is subject to taxation without limitation of rate or amount. Said indebtedness is more particularly described as follows:

Description of Indebtedness	Principal Amount		Unpaid Interest Accrued to 1/1/37	
	In Original Form	Reduced to Judgment	In Original Form	Reduced to Judgment
Notes Payable:				
Florida Power & Light Co.	$120,843.29		$52,590.30	
Rensellaer Valve Co.	2,636.00		321.34	
J. E. Canning	10,000.00		4,138.50	
County of Dade	5,653.20		2,880.38	
City of Miami	11,146.80		5,633.53	
Gamewell Company	10,758.00		3,222.03	
Accounts Payable:				
Florida Power & Light Co.	149,630.11		32,199.75	
Judgments:				
Ellen Hopkins		$13,337.62		$ 3,227.18
Sarah McGuire		71,965.50		25,580.91
W. W. Blount		15,063.45		4,333.60
Parker Maxwell		274.65		50.12
E. B. Connally		765.28		140.34

Section 3. The principal of the indebtedness referred to in Sections 1 and 2 hereof, together with all unpaid interest accrued thereon to January 1, 1937, shall be readjusted and refunded by issuing in exchange therefor Refunding Bonds in a principal amount equal to fifty (50%) per cent of all unpaid principal indebtedness referred to in Sections 1 and 2 hereof, not to exceed, however, the total sum of $4,200,000 and Tax Participation Certificates for the difference between the total principal amount of Refunding Bonds authorized to be delivered hereunder and the amount of such total outstanding indebtedness with unpaid interest accrued thereon to January 1, 1937. Each creditor shall receive Refunding Bonds in a principal amount equal to fifty (50%) per cent of the principal amount of the outstanding indebtedness held by such creditor and for the difference between the total outstanding indebtedness including unpaid interest accrued to January 1, 1937, so held by such creditor, and the principal amount of Refunding Bonds to be so issued to him, such creditor shall receive Tax Participation Certificates on the basis hereinafter provided evidencing the fact that indebtedness in an amount equal to such difference has been surrendered by him.

Section 4. Refunding Bonds in the principal amount of Three Million Nine Hundred Eighty-eight Thousand Five Hundred Dollars ($3,988,500) are hereby authorized to be issued for the purpose of refunding the bonded indebtedness described in Section 1 hereof and any judgments heretofore or hereafter recovered thereon. Wherever any such bonded indebtedness has been or may hereafter be reduced to judgment it shall be refunded hereunder in the same manner and upon the same basis as though it had not been reduced to judgment, and for this purpose interest on the principal amount of bonds reduced to judgment shall be computed at the rate prescribed in such

bonds and interest upon interest shall be excluded. Taxes sufficient to produce the sums required for the payment of principal and interest of said Refunding Bonds will be levied upon all property within the present territorial limits of The City of Coral Gables, which was not exempted from taxation by the Constitution of the State of Florida as it existed immediately prior to November 6 1934, and all such property shall be subject to the specific tax levies hereinafter directed to be made.

Section 5. Refunding Bonds in the principal amount of Two Hundred Six Thousand Dollars ($206,000) are hereby authorized to be issued for the purpose of refunding the indebtedness described in Section 2 hereof and any judgments heretofore or hereafter recovered thereon. Wherever any such indebtedness has been or may hereafter be reduced to judgment it shall be refunded hereunder in the same manner and upon the same basis as though it had not been reduced to judgment, and for this purpose interest on the principal amount of such indebtedness reduced to judgment shall be computed at the rate, if any, prescribed in such indebtedness, but in no event at a rate in excess of six per cent per annum, and interest upon interest shall be excluded. Taxes sufficient to produce the sums required for the payment of principal and interest on said Refunding Bonds will be levied upon all property within the present territorial limits of The City of Coral Gables, which was not exempted from taxation by the Constitution of the State of Florida as it existed immediately prior to November 6, 1934, and all such property shall be subject to the specific tax levies hereinafter directed to be made.

Section 6. All of said Refunding Bonds shall be dated January 1, 1937 and shall mature July 1, 1977, subject to redemption on any interest payment date prior to maturity upon payment of the par value thereof and accrued

interest to the date fixed for redemption. In the event bonds are to be redeemed prior to maturity, except in respect to purchases and/or redemption of bonds that may be made under Section 12 of this Ordinance, the particular bonds to be redeemed shall be determined by lot and shall be redeemed only after notice of redemption, setting forth the numbers of the particular bonds to be redeemed and the date fixed for redemption, shall have been published in a financial newspaper published in the City of New York, N. Y., once a week for two consecutive calendar weeks, the date of the first publication of such notice to be at least thirty days prior to the date fixed for redemption. Said Refunding Bonds shall bear interest at the rate of two and one-half per centum per annum to July 1, 1939; thereafter at the rate of three per centum per annum to July 1, 1945; thereafter at the rate of three and one-half per centum per annum to July 1, 1947; thereafter at the rate of four per centum per annum to July 1, 1952; thereafter at the rate of four and one-half per centum per annum to July 1, 1962, and at the rate of five per centum per annum thereafter and until the maturity of said bonds. Interest upon said Refunding Bonds shall be payable semi-annually January 1 and July 1, and shall be evidenced by interest coupons to be attached thereto. Both principal and interest of said Refunding Bonds shall be payable in lawful money of the United States of America at Central Hanover Bank and Trust Company, New York City, N. Y., and said Refunding Bonds shall contain provisions for their registration as to principal alone, and as to both principal and interest. Said Refunding Bonds shall be numbered and issued in such denominations as may hereafter be fixed by resolution of the City Commission.

The City may apply any monies in the Sinking Fund hereinafter provided for said Refunding Bonds to the purchase of Refunding Bonds at the lowest prices submitted,

provided that such prices shall be less than the par value and accrued interest on the Refunding Bonds to be so purchased. The City covenants that in the event there is in the Sinking Fund hereinafter provided for the Refunding Bonds the sum of $20,000 or more, it will apply the monies in such Sinking Fund to the purchase of Refunding Bonds at the prices and subject to the conditions herein provided for. Any and all purchases of Refunding Bonds with Sinking Fund monies will be made by calling for and accepting tenders. Thirty days prior to the receipt of tenders the City will cause to be published in a financial paper published in the City of New York, N. Y., a notice requesting tenders of Refunding Bonds and fixing the time and place at which such tenders will be received. All tenders will be required to be contained in plain, sealed envelopes marked "Tender of City of Coral Gables, Refunding Bonds", and will be opened in public on the day and at the place fixed in the notice calling for such tenders. Except in the case of calls for tenders which may be required to be made by reason of the existence of $20,000 or more in the Sinking Fund for Refunding Bonds, the City shall have the right to reject any and all tenders in excess of a fixed price to be determined by it. Subject to the exercise of this right all monies on hand in the Sinking Fund on the date fixed for the receipt of such tenders will be applied immediately to the purchase of Refunding Bonds tendered at the lowest prices. If tenders of a greater amount of Refunding Bonds at the same price are received, than monies are available in the Sinking Fund for the purchase thereof, the City will purchase the Refunding Bonds tendered at such price in the order in which the tenders were received, provided, however, that the City shall have first purchased all other Refunding Bonds, which may have been tendered at a lower price, if any. In the event there shall be insufficient monies in the Sinking Fund to purchase all of the Refunding Bonds

offered by any tender otherwise acceptable, the City may accept any part of the Refunding Bonds so tendered. The City, at its option, may require all tenders of Refunding Bonds to be accompanied by a certified check of not exceeding one per cent of the amount of Refunding Bonds so tendered to evidence the good faith of the tender.

In the event monies in the Sinking Fund shall accumulate to the amount of $20,000 or more and remain on hand for more than six months, notwithstanding the fact that the City has made all calls for tenders of Refunding Bonds as required herein, the City covenants that such monies will be applied to the redemption of Refunding Bonds to be selected by lot in an amount sufficient to exhaust such monies upon the first interest payment date thereafter occurring, provided that if such interest payment date should occur within a period of time less than that for which notice of redemption must be given, plus 15 days, said monies will be set aside to be applied solely to the redemption of Refunding Bonds upon the next succeeding interest payment date. Any and all redemptions that may be made, as required by this paragraph will be made in accordance with the terms and provisions set forth in the Refunding Bonds, and in this ordinance, whereby the City reserves the right to redeem said Refunding Bonds prior to their maturity.

All Refunding Bonds purchased or redeemed by the City will be canceled immediately upon their surrender to the City. The City will not purchase any Refunding Bonds if and while it may be in default in the payment of interest on any Refunding Bonds unless tenders thereof shall have been accepted prior to such default, and then it may purchase only the bonds covered by such tenders.

Section 7. The Refunding Bonds herein authorized to be issued shall be signed by the Mayor, attested by the

City Clerk and the corporate seal of The City of Coral Gables shall be affixed thereto. The interest coupons thereto attached shall be executed with the facsimile signatures of said Mayor and said City Clerk. The text of said bonds shall be in the following form, with the additional recitals hereinafter prescribed incorporated therein where space is provided therefor.

United States of America
State of Florida

The City of Coral Gables

Refunding Bond—Issue of January 1, 1937

No. $500.00

The City of Coral Gables in Dade County, Florida, is justly indebted and for value received hereby promises to pay to bearer, or if this bond be registered, to the registered owner hereof, on the 1st day of July, 1977, the principal sum of Five Hundred Dollars ($500.00) together with interest thereon from the date hereof at the rate of two and one half per centum per annum to July 1, 1939; thereafter at the rate of three per centum per annum to July 1, 1945; thereafter at the rate of three and one-half per centum per annum to July 1, 1947; thereafter at the rate of four per centum per annum to July 1, 1952; thereafter at the rate of four and one-half per centum per annum to July 1, 1962, and at the rate of five per centum per annum thereafter and until the maturity hereof, said interest being payable semi-annually on the first days of January and July in each year. Both principal and interest hereof are payable in lawful money of the United States of America at Central Hanover Bank & Trust Company in the City of New York, N. Y., upon presenta-

tion and surrender of this bond and the interest coupons hereto attached as they severally mature.

This bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of Florida, including the Charter of The City of Coral Gables, and pursuant to the authority conferred by a majority of the votes cast in an election held in said City on the 25th day of January 1937 by the qualified electors who were freeholders of The City of Coral Gables, in which election a majority of the freeholders who were qualified electors residing in said City participated, for the purpose of refunding valid subsisting bonded debt of said City for the payment of which the City was obligated to levy taxes upon all property within its present territorial limits, which was subject to taxation under the Constitution and Laws of Florida as they existed prior to November 6, 1934.

The City of Coral Gables hereby reserves the right to redeem this bond on any interest payment date upon payment of par and accrued interest, and agrees that it will apply the sinking fund created by the ordinance authorizing the issuance of this bond to be redemption of the bonds of this issue at par and accrued interest by lot whenever such Sinking Fund amounts to $20,000 or more, and is not used for the purchase of bonds of this issue at less than par and not reserved to so acquire such bonds under then published notice, in the manner more particularly prescribed by the ordinance authorizing the issuance of this bond. In the event this bond is so called for redemption, notice thereof shall be published in a financial newspaper published in the City of New York, N. Y., once a week for two consecutive calendar weeks, the date of first publication to be at least thirty days prior to the date fixed for redemption. If this bond shall not be presented for payment on the date so fixed for redemption, it shall

cease to bear interest from and after said date. The Sinking Fund provided for said bonds may also be used in the purchase thereof, in accordance with the provisions of the ordinance authorizing their issuance.

It is hereby certified and recited that all acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of this bond, have happened, exist and have been performed in due time, form and manner as required by the Constitution and laws of the State of Florida; that the total indebtedness of said City, including this bond, does not exceed, and that the total indebtedness of said City at the creation of the indebtedness refunded hereby, including said indebtedness, did not then exceed, any constitutional or statutory limitation thereon and that the full faith and credit of the City are pledged for the payment of principal and interest of this bond.

The City of Coral Gables covenants with the holder of this bond that for the payment of the principal and interest thereof, it will levy taxes in an amount sufficient to provide therefor upon all property within the present territorial limits of said City, excepting only that property which was exempted from municipal taxation by the Constitution of the State of Florida, as it was in force and effect immediately prior to November 6, 1934. The City further covenants that all taxes levied for the payment of the principal and interest hereof, including taxes upon homesteads, will be collected in cash at the same time and in the same manner as operating and governmental *ad valorem* taxes levied by said City, and the remedies for the enforcement of the indebtedness refunded hereby shall appertain to this bond and the taxes securing the same independently of any restrictions or limitations thereon enacted or made effective since November 5, 1934.

This bond may be registered as to principal alone and as to both principal and interest in accordance with the provisions indorsed hereon.

In Witness Whereof said City of Coral Gables has caused this bond to be signed by its Mayor, attested by its City Clerk and its corporate seal to be hereunto affixed and the interest coupons hereto attached to bear the facsimile signatures of said Mayor and said City Clerk, all as of the first day of January, 1937.

.....

Mayor.

Attest:

.....

City Clerk.

Validation Certificate.

Validated and confirmed by decree of the Circuit Court of the 11th Judicial Circuit of the State of Florida, in and for Dade County, rendered ..... 19...

.....

Clerk of said Circuit Court.

Provisions For Registration.

This bond may be registered in the name of the holder on books to be kept by the City Clerk, as Registrar, as to principal only, such registration being noted hereon by such Registrar in the registration blank below, after which no transfer shall be valid unless made on said books by the registered holder or attorney duly authorized, and similarly noted in the registration blank below, but it may be discharged from registration by being transferred to bearer, after which it shall be transferable by delivery, but it may be again registered as before. The registration of this bond as to principal shall not restrain the negotiability

of the coupons by delivery merely, but the coupons may be surrendered and the interest made payable only to the registered holder, in which event the registrar shall note in the registration blank below that the bond is registered as to interest, as well as principal, and thereafter the interest will be remitted by mail in New York exchange to the registered holder. With the consent of the holder and of The City of Coral Gables, this bond when converted into a bond registered as to both principal and interest may be reconverted into a coupon bond and again converted into a bond registered as to both principal and interest, as hereinabove provided. Upon reconversion of this bond when registered as to principal and interest into a coupon bond, coupons representing the interest to accrue upon the bond to date of maturity shall be attached hereto by the registrar, and the registrar shall note in the registration blank below whether the bond is registered as to principal only or payable to bearer.

Date of Registration .....

In Whose Name Registered: .....

Address: .....

Manner of Registration: .....

Signature of Registrar: .....

Form of Coupon.

No. ..... $.....

On the first day of ....., 19...., The City of Coral Gables will pay to bearer at the Central Hanover Bank and Trust Company, New York City, New York, the sum of ..... Dollars ($.....)

in lawful money of the United States of America being six months' interest then due on its Refunding Bond—Issue of January 1, 1937, No. .....

.....

Mayor.

.....

City Clerk.

Refunding Bonds issued to refund the indebtedness described in Section 1 hereof shall recite that they are issued "for the purpose of refunding valid subsisting bonded debt of said City for the payment of which the City was obligated to levy taxes upon all property within its present territorial limits, which was subject to taxation under the Constitution and Laws of Florida as they existed prior to November 6, 1934."

Refunding Bonds issued to refund the indebtedness described in Section 2 hereof shall recite that they are issued "for the purpose of refunding valid subsisting indebtedness of said City for the payment of which the City was obligated to levy taxes upon all property within its present territorial limits, which was subject to taxation under the Constitution and Laws of Florida as they existed prior to November 6, 1934."

Section 8. There is hereby directed to be annually levied and collected a separate and special tax at the rate of six mills for each of the fiscal years 1937-38 to 1941-42, inclusive; at the rate of seven mills for each of the fiscal years 1942-43 to 1946-47, inclusive; at the rate of seven and one-half mills for each of the fiscal years 1947-48 to 1956-57, inclusive, and at the rate of eight mills for each of the fiscal years 1957-58 to 1976-77, inclusive. The proceeds of such tax levies, whether received before delinquency or after delinquency, or through the issuance of tax certificates or tax deeds, are hereby appropriated and will be

paid immediately upon receipt into a special fund known as "Issue of January 1, 1937 Fund," which is hereby established and pledged to the sole and exclusive purposes hereinafter set forth, and no obligations other than those expressly provided for herein shall ever be made a charge against such fund. If for any fiscal year the assessed valuation of property made subject to taxation hereunder, multiplied by the rate of tax above prescribed for such fiscal year, should equal an amount less than 33-1/3% of the amount appropriated for such fiscal year for purposes other than the Issue of January 1, 1937 Fund, then the rate of tax above prescribed for such fiscal year will be increased to a rate, the application of which to such assessed valuation will equal not less than 33-1/3% of the amount appropriated for such other purposes; provided, however, that in no event will the above prescribed rates ever be reduced; and provided, further that in arriving at the amount of such total annual appropriations there shall be excluded any sums appropriated: (a) for the payment of the extraordinary, non-recurring expenses incident to the present readjustment and refunding; (b) for repairs necessitated by hurricanes or other major catastrophes beyond the control of the City; (c) for capital improvements in connection with garbage or sewage disposal; and (d) in an amount not exceeding 12½% of the amount appropriated for purposes other than the Issue of January 1, 1937 Fund, for major paving repairs and parkway extensions. If any monies appropriated for any of the foregoing specified purposes should not be expended for such purposes during the fiscal year for which they were appropriated, then the amount thereof not so expended shall be deemed included in the total amount of appropriations for purposes other than the Issue of January 1, 1937 Fund for such fiscal year, and if the rate of tax prescribed for such fiscal year for the Issue of January 1, 1937 Fund, multiplied by the assessed valuation of property against which it is imposed, should equal an amount

less than 33-1/3% of the appropriations for purposes other than the Issue of January 1, 1937 Fund, including the amount of such unexpended appropriations, there shall be paid into the Issue of January 1, 1937 Fund, on the last day of such fiscal year, such additional amount as may be necessary to increase the appropriation for the Issue of January 1, 1937 Fund to 33-1/3% of such total appropriations for other purposes. There will also be paid into said Issue of January 1, 1937 Fund so much of the proceeds of taxes levied for the fiscal year 1936-37 as may be equal to the amount of interest to accrue upon the Refunding Bonds herein authorized from January 1, 1937 to July 1, 1937.

Section 9. The monies in said Issue of January 1, 1937 Fund established by Section 8 will in the first instance and from time to time be applied to the payment of interest on the Refunding Bonds as that interest matures and when at any time during the life of the Refunding Bonds the monies in such Fund should exceed the amount of such unpaid interest maturing during the then current fiscal year and the first semi-annual interest payment maturing in the next succeeding fiscal year, so much of such excess monies will be paid into a Sinking Fund for the Refunding Bonds so that payments into said Sinking Fund will be made during the fiscal years set forth below and in the amounts set opposite thereto.

Fiscal Year	Amount of Payment	Fiscal Year	Amount of Payment
1945-46.....	$ 5,000	1961-62.....	$115,000
1946-47.....	10,000	1962-63.....	130,000
1947-48.....	20,000	1963-64.....	135,000
1948-49.....	25,000	1964-65.....	140,000
1949-50.....	30,000	1965-66.....	145,000
1950-51.....	30,000	1966-67.....	150,000

Fiscal Year	Amount of Payment	Fiscal Year	Amount of Payment
1951-52.....	30,000	1967-68.....	160,000
1952-53.....	40,000	1968-69.....	170,000
1953-54.....	40,000	1969-70.....	180,000
1954-55.....	40,000	1970-71.....	190,000
1955-56.....	50,000	1971-72.....	200,000
1956-57.....	55,000	1972-73.....	210,000
1957-58.....	85,000	1973-74.....	220,000
1958-59.....	90,000	1974-75.....	230,000
1959-60.....	100,000	1975-76.....	240,000
1960-61.....	110,000	1976-77.....	250,000

The Sinking Fund payment to be made during the fiscal year 1976-77 will be increased by the amount, if any, by which the principal amount of Refunding Bonds then outstanding exceeds the amount of the Sinking Fund payment above required for such fiscal year.

Notwithstanding the rates of taxation directed to be levied by Section 8 for the fiscal years 1937-38 to 1976-77, it is hereby further directed that as long as any Refunding Bonds may be outstanding the rates of taxation prescribed by Section 8 will be increased, if necessary, in order to produce the sums required for the payment of interest on said Refunding Bonds and the Sinking Fund payments hereinabove directed to be made as the same respectively mature or become payable hereunder and in determining the rate of tax necessary to be levied in any fiscal year for said purposes, such rate of tax will be levied which will produce the sum so required when applied (1) to the current assessed valuation of all real property against which the City held no tax lien on the preceding August 31st for taxes levied prior to the preceding fiscal year, and (2) to that percentage of the current assessed valuation of personal property which was found to be collectible

in the next preceding fiscal year; provided, however, that in no event will the rate of tax be lower than the minimum rates prescribed by Section 8. If in any fiscal year while the Refunding Bonds are outstanding there should not be paid into the Sinking Fund for the Refunding Bonds, the amount hereinabove required for such fiscal year, the City covenants that for the next succeeding fiscal year it will levy an additional tax over and above all other taxes required hereby, sufficient to produce in such fiscal year the amount of such deficiency. The additional taxes required to be levied for any fiscal year by this paragraph may be reduced by the amount of money derived from sources other than the proceeds of levies required to be made under the provisions of Section 8 which is actually on hand and validly appropriated to the Issue of January 1, 1937 Fund at the time of making the tax levy for such fiscal year, but no reduction shall be made below the minimum rates prescribed by Section 8; provided, however, that the proceeds collected from the said extra millage which might be required to make up such a deficiency in the Sinking Fund shall be considered as an advance by the City against the collection of the delinquent Debt Service Taxes, the non-payment of which caused the necessity for the said extra millage, and as such delinquent taxes are collected they shall be repaid to the City in the amount of the proceeds of said extra millage actually paid into said Sinking Fund, to be held by the City in trust as a separate Emergency Sinking Fund, to be used for the purpose of reducing the amount of any such extra millage which might otherwise be required in the future to make up such a deficiency in the Sinking Fund, and all delinquent tax collections resulting from said extra millage, made after supplying such deficiency in the Sinking Fund, shall be paid into said Emergency Sinking Fund for future use for said purpose, but in no event shall the tax rates required in Section 8 be re-

duced. Interest maturing July 1 of any fiscal year will be levied for and included in the taxes imposed for the fiscal year immediately preceding. The proceeds of all taxes required to be levied by this Section, received before delinquency, and the net proceeds collected after delinquency or through the issuance of tax certificates or tax deeds, after deducting their proportionate share of foreclosure and other necessary collection costs, are hereby appropriated and will be paid immediately upon receipt into the Issue of January 1, 1937 Fund, established by Section 8 and thereafter applied as other monies in said Fund are directed to be applied. Upon the retirement of all of said Refunding Bonds or the call thereof and setting aside of sufficient monies to redeem the same no further Sinking Fund payments shall be made out of said Issue of January 1, 1937 Fund and the obligation of the City to levy additional taxes under this Section shall cease, but the City will continue to levy the minimum taxes prescribed by Section 8 for the years set forth therein; provided, however, that if the City should at any time retire all of said Refunding Bonds then outstanding, through a new refunding or refinancing issue bearing interest at a rate lower than that borne by the Refunding Bonds herein authorized, the City shall be entitled to reduce the annual payments herein provided to be made into said Issue of January 1, 1937 Fund to the extent of the annual interest and Sinking Fund payments prescribed by this section for the Refunding Bonds so retired, but in no event shall the aggregate reductions in the annual payments into said Issue of January 1, 1937 Fund exceed the principal amount of Refunding Bonds so retired and the interest that would have been paid thereon at the rates prescribed herein if they had been retired in the amounts and at the times contemplated by the schedule of Sinking Fund payments hereinbefore prescribed; and provided, further, that if at any time prior to the fiscal year 1976-77 all of said Refunding Bonds shall have been retired and there shall

have been earmarked for payment or paid on account of such Tax Participation Certificates an amount equal to the full amount of the indebtedness surrendered therefor, the obligation of the City to levy the foregoing fixed debt service annual tax millages shall cease and terminate and any surplus funds and delinquent taxes over and above the amounts required to complete said payments in the Issue of January 1, 1937 Fund, the Emergency Sinking Fund or any other funds raised from levies made under the provisions hereof, shall be released to the City and become available for expenditure for any lawful municipal purpose.

Monies in the Sinking Fund will be applied solely to the retirement of the principal of Refunding Bonds by purchase, call or payment in the manner hereinbefore directed and any surplus monies remaining in said Sinking Fund upon retirement of all Refunding Bonds will be repaid to the Issue of January 1, 1937 Fund.

Section 10. Annually on the last day of each of the fiscal years 1937-38 to 1976-77, inclusive, all monies, if any, derived from levies at the tax rates prescribed in Section 8 hereof, remaining in said Issue of January 1, 1937 Fund after paying interest maturing on the Refunding Bonds in such fiscal year and the Sinking Fund payment required to be made hereunder for such fiscal year, and after reserving in said Issue of January 1, 1937 Fund an amount equal to the first semi-annual interest payment maturing on said Refunding Bonds in the next succeeding fiscal year, will be forthwith paid into a "Tax Participation Certificate Fund" which is hereby constituted and established. Said Tax Participation Certificate Fund will be held and administered by the City as trustee for the sole use and benefit of the registered holders of Tax Participation Certificates issued against such fund.

It is hereby directed that there be issued against such fund Tax Participation Certificates in exchange for and in full satisfaction of the difference between the aggregate indebtedness including unpaid interest thereon accrued to January 1, 1937 described in Sections 1 and 2 hereof and the principal amount of Refunding Bonds authorized to be issued and delivered hereunder. One Tax Participation Certificate shall be issued in exchange for each Five Hundred ($500.00) Dollars of indebtedness surrendered and representing the difference between the aggregate indebtedness and the principal amount of the Refunding Bonds authorized to be delivered hereunder. For any part of such indebtedness which may be less than Five Hundred ($500.00) Dollars, a fraction of a Tax Participation Certificate equal to the percentage that such indebtedness bears to Five Hundred ($500.00) Dollars shall be issued. Each creditor of the City shall be entitled to receive a number of Tax Participation Certificates which, on the basis of Five Hundred ($500.00) Dollars per certificate, will be equal to the difference between the amount of the indebtedness held by him, including unpaid interest accrued thereon to January 1, 1937, and the principal amount of Refunding Bonds to which he may be entitled hereunder upon surrender and cancellation of the indebtedness so held by him. The extent of the participation in such fund of any holder of such certificates shall be measured by the ratio that the amount of indebtedness exchanged for the certificates held by him bears to the total amount of indebtedness surrendered for all Tax Participation Certificates issued and outstanding hereunder. Such certificates shall be entitled to payment solely out of the Tax Participation Certificate Fund if and when monies may accumulate therein and shall not constitute, either directly or indirectly, or be construed to be, a debt of the City, but shall merely evidence the right of the holder to participate annually on a pro rata basis in the years 1938 to 1977, inclusive, in the monies, if any, here-

in required to be paid into the Tax Participation Certificate Fund. Said Certificates shall bear no interest and shall have no definite maturity date.

It is hereby directed that on August 1st of each year, beginning in the year 1938, all funds on hand on the preceding July 1st in said Tax Participation Certificate Fund shall be apportioned and distributed pro rata among all the holders of the outstanding Tax Participation Certificates registered on each said July 1st as owners on the register of the Tax Participation Certificates kept by the City Clerk, as Registrar, by remitting such funds to them in New York Exchange by mail. There shall accompany each disbursement to be so made a statement setting forth the total amount of monies being disbursed, the total amount of indebtedness for which outstanding Tax Participation Certificates have been issued, and the amount being disbursed on account on each of the Tax Participation Certificates registered in the name of the holder to whom such disbursement is remitted. In the year 1977 such disbursement shall be made on December 31st of all monies in said Tax Participation Certificate Fund as of December 15th to the registered holders of record December 15th.

Tax Participation Certificates shall be issued in registered form, transferable only upon the books of the City Clerk of The City of Coral Gables, as Registrar, shall be executed with the facsimile signature of the Mayor under the corporate seal of the City, attested manually by the City Clerk and shall be dated January 1, 1937.

Upon there being paid on account of such certificates the full amount of the indebtedness exchanged therefor they shall be surrendered to the City and canceled by it provided, however, that, in any event, all such certificates shall be surrendered to the City and canceled by it upon

the 1977 and prior annual payments, if any, being made thereon, regardless of the total amount paid thereon and thereupon the City shall have no further duties with respect to any such certificates.

Said Certificates may be transferred from time to time by the holder thereof, or his personal representative, by assignment duly registered and noted in the registration blank on said certificate. The transfer shall be registered in a book kept for that purpose by the City Clerk of The City of Coral Gables, as Registrar, and no holder thereof, or party interested therein, shall be entitled to recognition as such by the City for any purpose unless the same be so registered, but said Register shall be conclusive as to such ownership; and the City shall be authorized to treat the person in whose name any such Certificate may be registered on the books of the City Clerk of The City of Coral Gables, as Registrar, as the owner thereof for all purposes.

Any notice to be sent to any Certificate holder shall be mailed postage prepaid addressed to such certificate holder at the address shown on the Register of the Tax Participation Certificates kept by the City Clerk, as Registrar, and the mailing of such notice shall be sufficient and conclusive evidence of actual notice to the certificate holders. Any monies, checks, remittances or other things at any time to be distributed or forwarded to any certificate holder may, in like manner and at the risk of the certificate holder, be mailed to such certificate holder at such address.

The City will keep accurate records showing the total amount and rate of taxes levied in each of the fiscal years 1937-38 to 1976-77 and the amount and rate of tax levies made pursuant to the provisions of Section 8 hereof and the manner in which such amount and rate was determ-

ined. The records of the City will also be maintained in such a manner as to show the proceeds of all tax collections made during such fiscal years and the manner in which such proceeds have been accounted for, as well as an accurate record of any and all payments and disbursements made into and out of the Issue of January 1, 1937 Fund, the Sinking Fund and the Tax Participation Certificate Fund. Any registered holder of Tax Participation Certificates will be entitled to examine and inspect such books and records of the City and at his own expense to have an audit thereof made from time to time during the regular business hours for which the City's offices and departments are open.

Section 11. The Tax Participation Certificates authorized to be issued by Section 10 hereof, shall be issued in substantially the following form. Tax Participation Certificates issued in exchange for any indebtedness described Section 1 hereof, shall state that the indebtedness surrendered in exchange therefor, constituted a "valid subsisting bonded debt of said City" and Tax Participation Certificates issued in exchange for any indebtedness described in Section 2 hereof shall state that the indebtedness surrendered in exchange therefor, constituted a "valid subsisting indebtedness of said City".

No. .....

United States of America
State of Florida

The City of Coral Cables

Tax Participation Certificate

Issue of January 1, 1937

The City of Coral Gables in Dade County, Florida, hereby certifies that the registered holder hereof or his predecessors in interest, has surrendered to the City in ex-

change for this certificate Five Hundred Dollars valid subsisting bonded debt (or indebtedness) of said City, for the payment of which the City was obligated to levy taxes upon all property within its present territorial limits, which was subject to taxation under the Constitution and laws of Florida as they existed prior to November 6, 1934, and has accepted this Certificate in complete satisfaction and discharge of the indebtedness so surrendered.

This Certificate is payable solely out of the Tax Participation Certificate Fund established by Ordinance No. 269, adopted December 23rd, 1936 and shall not constitute, either directly or indirectly, or be construed to be, an indebtedness of The City of Coral Gables, but shall merely evidence the right of the holder to participate annually on a pro rata basis in the years 1938 to 1977, inclusive, in the monies, if any, required to be paid into the Tax Participation Certificate Fund. This Certificate shall bear no interest and shall have no definite maturity date.

The City of Coral Gables covenants that during the fiscal years 1937-38 to 1976-77, inclusive, it will levy the taxes provided for by said Ordinance and that it will annually apply the proceeds thereof in the first instance to the payment of interest and Sinking Fund payments on Refunding Bonds of the Issue of January 1, 1937 in the manner more particularly prescribed by such Ordinance and that it will pay the balance of such proceeds, if any, into the Tax Participation Certificate Fund.

On August 1st of each year, beginning in the year 1938, The City of Coral Gables covenants that it will apportion and make pro rata disbursement of all funds on hand on the preceding July 1st in said Tax Participation Certificate Fund among all the holders of the outstanding Tax Participation Certificates registered on each said July 1st as owners on the register of the Tax Participation Certifi-

cates kept by the City Clerk as Registrar, by remitting such funds to them in New York exchange by mail, except that in the year 1977 such disbursement will be made on December 31st of all monies in such fund as of December 15 to the registered holders of record December 15th. The pro rata share of any and all monies that might be available in the Tax Participation Certificate Fund to which the registered holder of this certificate may be entitled shall be that proportion of such monies equal to the ratio that the indebtedness surrendered in exchange for this certificate bears to the total indebtedness surrendered in exchange for all certificates of this issue that might be outstanding.

If the total of the payments made upon this certificate should at any time equal the Five Hundred Dollars of indebtedness exchanged herefor, this certificate shall be surrendered to the City and canceled by it. Notwithstanding the fact that the total of the payments made hereon may not equal the amount of the indebtedness exchanged herefor, this Certificate shall expire upon disbursement of all monies in the Tax Participation Certificate Fund after completion of the sale of tax liens representing taxes levied for the fiscal year 1976-77 and thereafter the City shall have no further duties with respect hereto.

This Certificate may be transferred from time to time by the holder hereof, or his personal representative, by assignment duly registered and noted in the registration blank on the reverse hereof. The transfer shall be registered in a book kept for that purpose by the City Clerk of the City of Coral Gables, as Registrar, and no holder hereof, or party interested therein, shall be entitled to recognition as such by The City for any purpose unless the same be so registered, but said register shall be conclusive as to such ownership; and the City shall be auth-

orized to treat the person in whose name this Certificate may be registered on the books of the City Clerk of The City of Coral Gables, as Registrar, as the owner thereof for all purposes.

Any transferee of this certificate shall take the same subject to any and all payments that might theretofore have been made hereon and subject to all the terms and provisions of the ordinance authorizing the issuance hereof and shall acquire only the rights and interests of the transferor as such rights and interests are more particularly prescribed by Ordinance No. 269, adopted December 23rd, 1936, which by reference is made a part hereof and hereby made binding upon each and every transferee hereof.

Any monies, checks, remittances, or other things at any time to be distributed or forwarded to any certificate holder may, at the risk of the certificate holder, be mailed, postage prepaid, addressed to such certificate holder at the address shown on the Register of the Tax Participation Certificates kept by the City Clerk as Registrar.

Any and all payments to which this Certificate may be entitled will be made in lawful money of the United States of America, and the City covenants that the taxes required to be levied in the fiscal years 1937-38 to 1976-77, inclusive, by the ordinance pursuant to which this Certificate has been issued, will be levied upon all property within the present territorial limits of the City, excepting only that property which was exempted from municipal taxation by the Constitution of Florida as it was in force and effect immediately prior to November 6, 1934, and that such taxes will be collected in cash at the same time and in the same manner as operating and governmental ad valorem taxes levied by said City, and that the remedies

appertaining to this Certificate and the taxes securing the same will exist independently of any restrictions or limitations enacated or made effective since November 5, 1934.

This Certificate is issued under the authority of and in full compliance with the Constitution and Statutes of the State of Florida, including the Charter of The City of Coral Gables, and pursuant to the authority conferred by a majority of the votes cast in an election held in said City on the 25th day of January, 1937, by the qualified electors who were freeholders of The City of Coral Gables, in which election a majority of the freeholders who were qualified electors residing in said City participated.

It is hereby certified and recited that all acts, conditions and things required to happen, exist and be performed, precedent to and in the issuance of this Certificate, have happened, exist and have been performed in due time, form and manner as required by the Constitution and Statutes of the State of Florida, and that this Certificate is within every constitutional and statutory limitation.

In Witness Whereof, The City of Coral Gables has caused this Certificate to be executed with the facsimile singature of its Mayor, attested by its City Clerk, and its Corporate Seal to be hereunto affixed as of this First day of January, A. D. 1937.

.....
Mayor.

Attest:

.....
City Clerk.

Validation Certificate.

Validated and confirmed by decree of the Circuit Court of the Eleventh Judicial Circuit of the State of Florida, in and for Dade County, rendered ....., 19....

.....

Clerk of said Circuit Court.

Provision for Registration and Transfer.

No transfer of this Certificate shall be valid unless made on the books of the City Clerk of The City of Coral Gables, as Registrar, by the registered owner or attorney duly authorized, and similarly noted in the registration blank below.

Date of Registration: .....

In Whose Name Registered: .....

Address: .....

Signature of Registrar: .....

Section 12. The City further covenants and agrees, particularly in consideration of the waiver and relinquishment by the creditors of the City of all right to participate in the proceeds of delinquent tax assets of the City covering any and all claims representing delinquent taxes and/or special assessments imposed prior to January 1, 1936 and/or Tax Certificates, Tax Deeds or other assets now or hereafter derived therefrom, to apply to the purchase of Refunding Bonds at less than their par value with accrued interest, whether in the open market at the lowest price obtainable or in any other manner approved by the City Commission, the following cash sums or their

equivalent arising out of the liquidation of said delinquent tax claims or otherwise:

$45,000 on or before July 1st, 1938
48,000 on or before July 1st, 1939
51,000 on or before July 1st, 1940
51,000 on or before July 1st, 1941
51,000 on or before July 1st, 1942
51,000 on or before July 1st, 1943
54,000 on or before July 1st, 1944
54,000 on or before July 1st, 1945
48,000 on or before July 1st, 1946
47,000 on or before July 1st, 1947

In the event the City, on or before July 1st, in any of said years, shall fail to realize and/or apply said respective sums or their equivalent to and for the purchase and/-or acquirement of Refunding Bonds, as aforesaid, the City hereby covenants and agrees that it will levy a further and additional tax based on the assessment roll for the year in which said default occurs at a millage sufficient to produce the sum required for that year, and apply the proceeds from said levy to the purchase of Refunding Bonds in the manner above provided on or before July 1st of the following year.

The City further covenants and agrees that, during the period beginning January 1, 1938 and ending July 1, 1947, it will apply yearly a sum (inclusive of the yearly sums above set forth) equal to not less than sixty (60%) per cent of all net cash proceeds which may be realized from the liquidation of said delinquent taxes and/or other assets above described to the purchase of Refunding Bonds at less than their par value with accrued interest either in the open market at the lowest price obtainable or in any other manner approved by the City Commission, until an aggregate sum equal to Five Hundred Thou-

sand ($500,000) Dollars, or its equivalent, realized from this source or procured from any other source, has been utilized under the terms of this Section 12, whereupon, any and all further obligation to apply said net proceeds shall cease and terminate. The City shall be under no obligation to apply to the purchase of Refunding Bonds any net proceeds in any manner realized from the liquidation of the above described delinquent taxes and other assets during the calendar year 1937. In the event the City should be unable to purchase Refunding Bonds at less than their par value with accrued interest in the manner above provided, it will apply the funds above referred to to the retirement of Refunding Bonds by lot in accordance with the redemption provisions contained therein.

All Refunding Bonds so purchased or redeemed by the City under the terms of this Section 12 shall be promptly canceled.

Section 13. The City agrees that in preparing its annual appropriation ordinance and tax levy ordinance for any fiscal year, it will include therein as an appropriation for operating expenses, an amount equal to the estimated deficit to be incurred in the operation of all utilities and enterprises by the City during the fiscal year for which such appropriation and tax levy ordinances are prepared, which estimated deficit shall never be less than the actual deficit incurred in the operation of such ultilities and enterprises during the preceding fiscal year. Anticipated collections of delinquent taxes will not be considered as revenue available for the Issue of January 1, 1937 Fund in preparing the appropriation ordinance of the City or in fixing the tax levy for any fiscal year, but the City covenants that all moneys received by it through the collection of delinquent taxes levied for such fund will be paid into it immediately upon collection.

Section 14. The City hereby covenants that all property within its territorial limits subject to taxation hereunder will be assessed at the full cash value thereof and that notwithstanding Section 7, Article X, of the Constitution of the State of Florida, added thereto by amendment ratified November 6, 1934, and any legislation enacted pursuant thereto, it will, while said Refunding Bonds or Tax Participation Certificates or any of them remain outstanding, levy the taxes herein provided for upon all homesteads within the territorial limits of the City to the same extent as other property in the City may be liable therefor.

The City further covenants and expressly agrees that the same rights of procedure open to property owners in appealing from assessments on property are hereby made available to any holder or holders of Refunding Bonds.

Section 15. All tax levies required to be made hereunder for the Issue of January 1, 1937 Fund and the tax levies that may be required to be made by Section 12 hereof shall constitute special levies for the particular purposes, for which they are imposed. Such tax levies, while constituting special levies, will be collected at the same time and in the same manner as other ad valorem taxes which may be levied by the City and upon collection will be immediately segregated and paid into such funds as hereinbefore provided. The City covenants that it will set aside daily out of the proceeds of its tax collections, including the monies derived from the sale or transfer of tax certificates and tax deeds in connection with taxes levied after July 1, 1936 the proper proportionate amount thereof applicable to the Issue of January 1, 1937 Fund and the Fund provided for by Section 12 hereof. All monies so paid into such funds will be forthwith deposited with a city depositary and held by it in trust for the purposes hereinbefore specified.

Section 16. The City hereby covenants that it will actively and diligently enforce the collection of all taxes hereafter levied for the Issue of January 1, 1937 Fund and the Fund provided for by Section 12 hereof and that it will not accept anything but lawful money of the United States of America in payment or satisfaction of the taxes required to be levied or pledged hereunder to such funds. No reduction, compromise or adjustment will be made in the amount or time for payment of such taxes, but promptly following the legally allowable date the City will enforce the collection of such taxes as may become delinquent through tax sales and by strictly pursuing all remedies available to it for compelling the payment of such delinquent taxes and will complete the sale for the enforcement of taxes at the earliest possible date following the close of the fiscal year for which such taxes were levied. The net proceeds received through the sale of tax liens, tax certificates and tax deeds after pro rating and deducting foreclosure and all necessary collection costs and expenses will be applied by the City to the purposes for which the taxes collected thereby were levied or are pledged hereunder.

Section 17. The City covenants that it will not accept payment of any tax or part thereof hereafter levied against any parcel of property for operating or governing the City unless all taxes hereafter levied against the same parcel of property for the Issue of January 1, 1937 Fund and the Fund provided for by Section 12 hereof are paid at the same time.

Section 18. The City covenants that so long as any of the Refunding Bonds or Tax Participation Certificates authorized hereby may be outstanding, it will not avail itself of the provisions of Chapter 16965, Laws of 1935, or any other legislation which may be hereafter enacted by the Legislature of the State of Florida in any way im-

pairing or modifying the obligation of the City on such Refunding Bonds or any undertakings in connection with Tax Participation Certificates authorized hereby or the covenants of the City contained herein.

Section 19. The City may acquire for its own account with any monies other than monies in the Issue of January 1, 1937 Fund, the Sinking Fund, the Tax Participation Certificate Fund or the $500,000 Fund provided for by Section 12 hereof or required to be paid into such funds hereunder, Refunding Bonds or Tax Participation Certificates authorized hereby and upon so acquiring such bonds or Certificates, may hold the same for its own use and benefit. Any Refunding Bonds that may be so acquired by the City shall not be eligible for purchase by it pursuant to calls for tenders required to be made hereunder, but such Refunding Bonds shall be included with all other outstanding Refunding Bonds in the event the City is required hereunder to call bonds for redemption. In all respects other than the tender of bonds for purchase, Refunding Bonds and Tax Participation Certificates so acquired by the City shall be entitled to the same rights and privileges and subject to the same terms and conditions as outstanding bonds and Certificates held by others, and the monies, if any, received by the City on account of such bonds and certificates, may be used by the City for any valid municipal purpose. Nothing in this section shall be deemed to permit the City to acquire bonds or Certificates for its own account out of any monies in the Issue of January 1, 1937 Fund, the Sinking Fund or the Tax Participation Certificate Fund or the $500,000 Fund provided for by Section 12 hereof or required hereby to be paid into such funds.

Section 20. The Commission of the City of Coral Gables is hereby authorized to take any and all proceedings and to enter into any and all agreements deemed necessary or

advisable for the purpose of effectuating the readjustment and refunding hereby authorized.

Section 21. A special election is hereby called and directed to be held at the regular voting place in the City of Coral Gables from 8 o'clock A. M. to sundown on the 25th day of January, 1937, for the purpose of submitting to the qualified electors who are freeholders of said City, a proposition for the issuance of the Refunding Bonds and Tax Participation Certificates authorized by this ordinance, and no Refunding Bonds or Tax Participation Certificates shall be issued hereunder until the proposition for the issuance thereof shall have been approved by a majority of the votes cast at such election by the qualified electors who are freeholders of said City, in which election a majority of the freeholders who are qualified electors residing in the City shall have participated. Notice of such election shall be given by publication in a newspaper of general circulation published in The City of Coral Gables once a week for three consecutive weeks, the first publication to be not less than twenty-one (21) days prior to the date of the election. Such notice of election shall set forth the date of election, the hours the polls will be open and the place at which the election will be held, and shall contain a complete copy of this ordinance.

The official ballot to be used at said election shall be in substantially the following form:

The City of Coral Gables, Florida

Official Ballot

Election January 25, 1937

If you approve the issuance of the Refunding Bonds and Tax Participation Certificates, make a cross mark (X) in

the square after the words "For the Refunding Bonds and Tax Participation Certificates". If you disapprove of the issuance of Refunding Bonds and Tax Participation Certificates, make a cross mark (X) in the square after the words "Against the Refunding Bonds and Tax Participation Certificates".

For the Refunding Bonds and Tax Participation Certificates [ ]

Against the Refunding Bonds and Tax Participation Certificates [ ]

Shall the indebtedness of The City of Coral Gables be adjusted and refunded by the issuance of not to exceed $4,200,000 Refunding Bonds maturing forty and one-half years after their date, subject to prior redemption, and bearing interest per annum at the rate of two and one-half per cent for the first two and one-half years; three per cent for the next six years; three and one-half per cent for the next two years; four per cent for the next five years; four and one-half per cent for the next ten years; and five per cent for the remaining fifteen years, and by the issuance of Tax Participation Certificates in exchange for the difference between the total indebtedness of the City, including unpaid interest thereon accrued to January 1, 1937, and the principal amount of such Refunding Bonds, said Tax Participation Certificates to represent the participating interests of the holders thereof in and to any funds in excess of the requirements of the Refunding Bonds that may be produced by certain fixed tax levies to be made in the years 1937 to 1976, inclusive, all as more particularly prescribed by Ordinance No. 269, entitled "An Ordinance Authorizing a Readjustment and Refunding of the Outstanding Indebtedness of The City of Coral Gables by the Issuance of Refunding Bonds and

Tax Participation Certificates", adopted by The City Commission on the 23rd day of December, 1936.

Section 22. All ordinances and parts of ordinances in conflict herewith shall be and the same are hereby repealed.

Section 23. In the event any section, subsection, sentence, clause or phrase of this ordinance shall be adjudicated invalid or unconstitutional such adjudication shall in no manner affect the other sections, subsections, sentences, clauses or phrases of this ordinance which shall be and remain in full force and effect as fully as if the section, subsection, sentence, clause or phrase so adjudged invalid or unconstitutional was not originally a part thereof.

Section 24. This ordinance is hereby declared to be an emergency measure on the ground of urgent public need for the preservation of peace, health, safety and property, and the measure, being passed by a vote of not less than four-fifths of the members of the Commission, shall take effect upon its adoption, publication, and posting as required by law.

Passed and Adopted this 23rd day of December A. D. 1936.

Approved:

ROSCOE BRUNSTETTER,
Mayor.

Attest:

G. N. SHAW,
City Clerk.

(Seal of the City of Coral Gables.)

69 EXHIBIT 2.

Ordinance No. 289.

An Ordinance Amending Ordinance No. 269 Adopted December 23, 1936, and Repealing Ordinance No. 284 Adopted June 2, 1937, for the Purpose of Giving Effect to the Decision of the Supreme Court of Florida in the Case of the City of Coral Gables vs. The State of Florida, Rendered July 30, 1937.

Whereas, It was provided by Ordinance No. 269 adopted December 23, 1936, that for the payment of all Refunding Bonds and Tax Participation Certificates authorized thereby homesteads situated within the limits of the City of Coral Gables would be taxable, notwithstanding the provisions of Section 7, Article X, of the Constitution of the State of Florida; and,

Whereas, In the validation proceedings instituted by the City for the purpose of validating said refunding obligations a decree was rendered by the Circuit Court validating all of said refunding obligations, upon the condition that the City would not be obligated to levy taxes on homesteads for the payment of the refunding obligations to be exchanged for three judgments heretofore recovered against the City in tort actions in the principal amount of $16,103.38 which, with interest thereon to January 1, 1937, in the sum of $4,524.06, aggregates $20,627.44, as well as indebtedness represented by accounts payable in the principal amount of $149,630.11 which, with interest thereon to January 1, 1937 in the sum of $32,199.75, aggregate $181,829.86; and,

Whereas, By decision rendered July 30, 1937, the Supreme Court of Florida has affirmed the decree of the

Circuit Court in all respects, and it is deemed advisable to give effect to the decision of said Court;

Now, Therefore, Be It Ordained By The Commission Of The City Of Coral Gables:

Section 1. Homesteads located within the territorial limits of the City of Coral Gables and exempted from taxation by the provisions of Section 7, Article X, of the Constitution and the statutes enacted pursuant thereto shall not be taxable for the payment of any refunding obligations issued in exchange for the following described indebtedness:

Description of Indebtedness	Principal Amount	Interest to 1/1/37
Accounts Payable—Florida Light & Power Company	$149,630.11	$32,199.75
Judgment—W. W. Blount	15,063.45	4,333.60
Judgment—Parker Maxwell	274.65	50.12
Judgment—E. B. Connally	765.28	140.34

Section 2. The principal amount of Refunding Bonds authorized to be issued by Section 5 of Ordinance No. 269 be and the same is hereby reduced from $206,000 to $123,-170.20, and for the purpose of refunding the principal of the indebtedness described in the preceding section and all unpaid interest to January 1, 1937 set forth therein, there is hereby authorized to be issued Refunding Bonds, Section Series, in the principal amount of $82,866.75 and Tax Participation Certificates, Second Series, for the difference between the principal amount of such refunding bonds and the principal outstanding indebtedness refunded thereby and for all unpaid interest accrued to January 1, 1937 set forth in the preceding section. Said Refunding Bonds, Second Series, and Tax Participation

Certificates, Second Series, will be entitled to participate in the proceeds of all taxes pledged to Refunding Bonds and Tax Participation Certificates authorized by Ordinance No. 269 except that no part of the proceeds of taxes on exempted homesteads will be applicable to Refunding Bonds, Second Series, or Tax Participation Certificates, Second Series. Such Refunding Bonds, Second Series, and Tax Participation Certificates, Second Series, will be issued in exchange for the indebtedness to be refunded thereby in the same manner and upon the same basis as that prescribed by Ordinance No. 269.

Section 3. The refunding bonds hereby authorized to be issued shall be in substantially the following form:

United States of America
State of Florida

The City of Coral Gables

Refunding Bond—Issue of January 1, 1937

Second Series

No. $500.00

The City of Coral Gables in Dade County, Florida, is justly indebted and for value received hereby promises to pay to bearer, or if this bond be registered, to the registered owner hereof, on the 1st day of July, 1977, the principal sum of Five Hundred Dollars ($500.00) together with interest thereon from the date hereof at the rate of two and one-half per centum per annum to July 1, 1939; thereafter at the rate of three per centum per annum to July 1, 1945; thereafter at the rate of three and one-half per centum per annum to July 1, 1947; thereafter

at the rate of four per centum per annum to July 1, 1952; thereafter at the rate of four and one-half per centum per annum to July 1, 1962, and at the rate of five per centum per annum thereafter and until the maturity hereof, said interest being payable semi-annually on the first days of January and July in each year. Both principal and interest hereof are payable in lawful money of the United States of America at Central Hanover Bank & Trust Company in the City of New York, N. Y., upon presentation and surrender of this bond and the interest coupons hereto attached as they severally mature.

This bond is issued under the authority of and in full compliance with the Constitution and Statutes of the State of Florida, including the Charter of The City of Coral Gables, and pursuant to the authority conferred by a majority of the votes cast in an election held in said City on the 25th day of January 1937 by the qualified electors who were freeholders of The City of Coral Gables, in which election a majority of the freeholders who were qualified electors residing in said City participated, for the purpose of refunding valid subsisting indebtedness of said City.

The City of Coral Gables hereby reserves the right to redeem this bond on any interest payment date upon payment of par and accrued interest, and agrees that it will apply the sinking fund created by the ordinance authorizing the issuance of this bond to the redemption of the bonds of this issue at par and accrued interest by lot whenever such Sinking Fund amounts of $20,000 or more, and is not used for the purpose of bonds of this issue at less than par and not reserved to so acquire such bonds under then published notice, in the manner more par-

ticularly prescribed by the ordinance authorizing the issuance of this bond. In the event this bond is so called for redemption, notice thereof shall be published in a financial newspaper published in the City of New York, N. Y., once a week for two consecutive calendar weeks, the date of first publication to be at least thirty days prior to the date fixed for redemption. If this bond shall not be presented for payment on the date so fixed for redemption, it shall cease to bear interest from and after said date. The Sinking Fund provided for said bonds may also be used in the purchase thereof, in accordance with the provisions of the ordinance authorizing their issuance.

It is hereby certified and recited that all acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of this bond, have happened, exist and have been performed in due time, form and manner as required by the Constitution and laws of the State of Florida; that the total indebtedness of said City, including this bond, does not exceed, and that the total indebtedness of said City at the creation of the indebtedness, did not then exceed, any constitutional or statutory limitation thereon and that the full faith and credit of the City are pledged for the payment of principal and interest of this bond.

The City of Coral Gables covenants with the holder of this bond that for the payment of the principal and interest thereof, it will levy taxes in an amount sufficient to provide therefor upon all taxable property within the present territorial limits of said City, excepting homestead property exempted from municipal taxation by Section 7, Article X, of the Constitution of the State of Florida, and that all taxes levied for the payment of the principal and interest hereof will be collected in cash at the same time and in the same manner as operating and governmental

ad valorem taxes levied by said City, and the remedies for the enforcement of the indebtedness refunded hereby shall appertain to this bond independently of any restrictions or limitations thereon enacted or made effective since the incurring of the indebtedness refunded hereby.

This bond may be registered as to principal alone and as to both principal and interest in accordance with the provisions indorsed hereon.

In Witness Whereof said City of Coral Gables has caused this bond to be signed by its Mayor, attested by its City Clerk and its corporate seal to be hereunto affixed and the interest coupons hereto attached to bear the facsimile signatures of said Mayor and said City Clerk, all as of the first day of January, 1937.

.....
Mayor.

Attest:

.....
City Clerk.

Form of Coupon.

No. ..... $.....

On the first day of ....., 19...., The City of Coral Gables will pay to bearer at the Central Hanover Bank and Trust Company, New York City, N. Y. the sum of ..... Dollars ($.....) in lawful money of the United States of America being six months' interest then due on its Refunding Bond-Issue of January 1, 1937, Second Series, No. .....

.....
Mayor.

.....
City Clerk.

The form of validation certificate and provisions for registration prescribed for refunding bonds by Ordinance No. 269 shall be applicable to the refunding bonds authorized hereby.

Section 4. The Tax Participation Certificates to be issued in exchange for the indebtedness described in Section 1 of this ordinance shall be in substantially the following form:

No. .....

United States of America
State of Florida

The City of Coral Gables

Tax Participation Certificate

Issue of January 1, 1937

Second Series

The City of Coral Gables in Dade County, Florida, hereby certifies that the registered holder hereof or his predecessors in interest, has surrendered to the City in exchange for this certificate Five Hundred Dollars valid subsisting indebtedness of said City, and has accepted this Certificate in complete satisfaction and discharge of the indebtedness so surrendered.

This Certificate is payable solely out of the Tax Participation Certificate Fund established by Ordinance No. 269, adopted December 23rd, 1936, as amended by Ordinance No. 269, and shall not constitute, either directly or indirectly, or be construed to be, an indebtedness of The City of Coral Gables, but shall merely evidence the

right of the holder to participate annually on a pro rata basis in the years 1938 to 1977, inclusive, in the monies, if any, required to be paid into the Tax Participation Certificate Fund. This Certificate shall bear no interest and shall have no definite maturity date.

The City of Coral Gables covenants that during the fiscal years 1937-38 to 1976-77, inclusive, it will levy the taxes provided for by said Ordinance and that it will annually apply the proceeds thereof in the first instance to the payment of interest and Sinking Fund payments on Refunding Bonds of the Issue of January 1, 1937 in the manner more particularly prescribed by such Ordinance and that it will pay the balance of such proceeds, if any, into the Tax Participation Certificate fund.

On August 1st of each year, beginning in the year 1938, The City of Coral Gables covenants that it will apportion and make pro rata disbursement of all funds on hand on the preceding July 1st in said Tax Participation Certificate Fund among all the holders of the outstanding Tax Participation Certificates registered on each said July 1st as owners on the register of the Tax Participation Certificates kept by the City Clerk as Registrar, by remitting such funds to them in New York exchange by mail, except that in the year 1977 such disbursement will be made on December 31st of all moneys in such fund as of December 15th to the registered holders of record December 15th. The pro rata share of any and all monies that might be available in the Tax Participation Certificate Fund to which the registered holder of this certificate may be entitled shall be that proportion of such monies equal to the ratio that the indebtedness surrendered in exchange for this certificate bears to the total indebtedness surrendered in exchange for all certificates of this issue that might be outstanding, except

that the holder of this certificate shall not be entitled to share in any monies derived from taxes on homesteads exempted from taxation by Section 7, Article X, of the Constitution of the State of Florida.

If the total of the payments made upon this certificate should at any time equal the Five Hundred Dollars of indebtedness exchanged herefor, this certificate shall be surrendered to the City and canceled by it. Notwithstanding the fact that the total of the payments made hereon may not equal the amount of the indebtedness exchanged herefor, this Certificate shall expire upon disbursement of all monies in the Tax Participation Certificate Fund after completion of the sale of tax liens representing taxes levied for the fiscal year 1976-77 and thereafter the City shall have no further duties with respect hereto.

This Certificate may be transferred from time to time by the holder hereof, or his personal representative, by assignment duly registered and noted in the registration blank on the reverse hereof. The transfer shall be registered in a book kept for that purpose by the City Clerk of the City of Coral Gables, as Registrar, and no holder hereof, or party interested therein, shall be entitled to recognition as such by The City for any purpose unless the same be so registered, but said register shall be conclusive as to such ownership; and the City shall be authorized to treat the person in whose name this Certificate may be registered on the books of the City Clerk of The City of Coral Gables, as Registrar, as the owner thereof for all purposes.

Any transferee of this certificate shall take the same subject to any and all payments that might theretofore have been made hereon and subject to all the terms and provisions of the ordinance authorizing the issuance

hereof and shall acquire only the rights and interests of the transferor as such rights and interests are more particularly prescribed by Ordinance No. 269, adopted December 23rd, 1936, as amended by Ordinance No. 289, which by reference is made a part hereof and hereby made binding upon each and every transferee hereof.

Any monies, checks, remittances, or other things at any time to be distributed or forwarded to any certificate holder may, at the risk of the certificate holder, be mailed, postage prepaid, addressed to such certificate holder at the address shown on the Register of the Tax Participation Certificates kept by the City Clerk as Registrar.

Any and all payments to which this Certificate may be entitled will be made in lawful money of the United States of America, and the City covenants that the taxes required to be levied in the fiscal years 1937-38 to 1976-77, inclusive, by the ordinance pursuant to which this Certificate has been issued, will be levied upon all property within the present territorial limits of the City, excepting homestead property exempted from municipal taxation by Section 7, Article X, of the Constitution of Florida, and that such taxes will be collected in cash at the same time and in the same manner as operating and governmental ad valorem taxes levied by said City, and that the remedies appertaining to this Certificate will exist independently of an restrictions or limitations enacted or made effective since the incurring of the indebtedness refunded hereby.

This Certificate is issued under the authority of and in full compliance with the Constitution and Statutes of the State of Florida, including the Charter of the City of Coral Gables, and pursuant to the authority conferred by a majority of the votes cast in an election held in said

City on the 25th day of January, 1937, by the qualified electors who were freeholders of The City of Coral Gables, in which election a majority of the freeholders who were qualified electors residing in said City participated.

It is hereby certified and recited that all acts, conditions and things required to happen, exist and be performed, precedent to and in the issuance of this Certificate, have happened, exist and have been performed in due time, form and manner as required by the Constitution and Statutes of the State of Florida, and that this Certificate is within every constitutional and statutory limitation.

In Witness Whereof, The City of Coral Gables has caused this Certificate to be executed with the facsimile signature of its Mayor, attested by its City Clerk, and its Corporate Seal to be hereunto affixed as of this First day of January, A. D. 1937.

.....,
Mayor.

Attest:

.....,
City Clerk.

The form of validation certificate and provision for registration and transfer prescribed for tax participation certificates by Ordinance No. 269 shall be applicable to the certificates authorized to be issued by this Ordinance.

Section 5. The minimum tax rates prescribed by Section 8 of Ordinance No. 269 shall be imposed upon all property which was not exempted by Section 7, Article X, of the Constitution of Florida, and there shall be im-

posed upon all homestead property exempted from taxation by said Section 7, Article X, of the Constitution the following minimum rates of taxation in lieu of those prescribed by Section 8 of Ordinance No. 269;

Fiscal Years	Minimum Rate
1937-38 to 1941-42, inc.	5.88 mills
1942-43 to 1946-47, inc.	6.86 mills
1947-48 to 1956-57, inc.	7.35 mills
1957-58 to 1976-77, inc.	7.84 mills

The proceeds of all taxes levied upon homestead property exempted from taxation by Section 7, Article X, of the Constitution shall be applied solely to the payment of refunding bonds and tax participation certificates in the manner prescribed by Ordinance No. 269 other than Second Series Refunding Bonds and Second Series Tax Participation Certificates authorized hereby, and such proceeds shall be kept separate from the proceeds of other taxes levied pursuant to Ordinance No. 269, as amended hereby, and shall be earmarked in the Issue of January 1, 1937 Fund, the Sinking Fund and Tax Participation Fund established by said Ordinance No. 269.

Section 6. The form of Tax Participation Certificates heretofore prescribed is hereby amended by inserting "as amended by Ordinance No. 289" in said certificates immediately following the words "Ordinance No. 269, adopted December 23rd, 1936" wherever such words appear in said certificates, and any such obligations that may be issued in temporary form shall be issued to conform to the changes made by this ordinance.

Section 7. All provisions of Ordinance No. 269 shall continue to be in force and applicable to the Second Series Refunding Bonds and Second Series Tax Partici-

pation Certificates, except to the extent that such provisions may be expressly modified hereby.

Section 8. Ordinance No. 284, adopted June 2, 1937, be and the same is hereby repealed.

Section 9. This ordinance is hereby declared to be an emergency measure on the ground of urgent public need for the preservation of peace, health, safety and property, and the measure being passed by a vote of not less than four-fifths of the members of the Commission shall take effect from and after this the date of its adoption.

Passed And Adopted this 4th day of September, A. D. 1937.

ROSCOE BRUMSTETTER.

Attest:
G. N. SHAW,
City Clerk.

78 EXHIBIT 3.

Ordinance No. 347.

An Ordinance Declaring The Necessity Of Filing a Petition In Bankruptcy; Adopting The Refunding Plan Set Forth In Ordinance No. 269, As Amended By No. 289, As a Plan Of Composition In Such Bankruptcy Proceeding; And Authorizing The City Attorney To File a Petition In Bankruptcy.

Whereas the City of Coral Gables since putting into effect the refunding plan authorized by Ordinance No. 269, as amended by Ordinance No. 289, in the year 1937 has endeavored to secure the agreement of the holders

of the small percentage of remaining outstanding old bonds to accept this plan but has been unable to secure the cooperation of all the holders of such bonds, and

Whereas Ed. C. Wright and Associates of St. Petersburg, Florida, have declined to accept said refunding bonds and tax participation certificates and litigation has been commenced to enforce the payment in full of the coupons held by said parties, and there appears to be no hope of an amicable settlement with the said bondholders, and

Whereas it would be unfair to the holders of the refunding bonds and tax participation certificates issue of January 1, 1937 for the City to submit to the payment of any old bonds and coupons in full, and the City is morally and legally obligated to take all legal steps available to it to force the exchange of one hundred per cent of the old obligations for the refunding securities, and

Whereas the only procedure now available to the City is to file a petition in bankruptcy in the United States District Court in and for the Southern District of Florida,

Now, Therefore, Be It Ordained By The Commission Of The City Of Coral Gables:

Section 1. It is hereby found and determined that as of March 1, 1940 the City of Coral Gables had exchanged and delivered refunding bonds and tax participation certificates for 94.18% of the City's old obligations; that the holders of 1.84% of said obligations had placed them in judgment and now hold peremptory writs requiring the levy of special taxes to pay the principal and interest due on the judgments; that 0.91% of the said obligations are owned and held by parties unknown to the City and that 3.07% being $252,000.00 of the said obligations, are

owned and held by Ed C. Wright and Associates and the American National Bank of Nashville, Tennessee, which bank has brought suit on the coupons alleged to be detached from the said bonds; and that many of the $326,000.00 worth of outstanding bonds are past due and more than $100,000.00 of the interest coupons are now past due and the City is unable to meet said past due debts and the other debts as they mature and it desires to effect a plan for the composition of its said indebtedness.

Section 2. That the proper city officials be and they are hereby authorized and directed to take such steps as may be necessary to prepare the City of Coral Gables to file a petition in bankruptcy in the United States District Court in and for the Southern District of Florida, and that Sections 1 to 20, both inclusive of Ordinance No. 269, as amended by Ordinance No. 289, be and they are hereby re-enacted by reference as a plan of composition in bankruptcy to be submitted to the Court in the bankruptcy proceedings authorized herein.

Section 3. That the City Attorney be and he hereby is authorized and directed to take all legal steps necessary preliminary to the filing of a petition in bankruptcy and to file in the United States District Court in and for the Southern District of Florida a petition in bankruptcy for and on behalf of the City of Coral Gables.

Passed And Adopted This Fifth Day Of March, A. D. 1940.

PAUL D. McGARRY,
Mayor.

Attest:
G. N. SHAW,
City Clerk.

79 EXHIBIT 4.

Acceptance Of Plan For The Composition Of Debts Of The City Of Coral Gables, Florida, And Consent To Filing a Petition For Said City Under Acts Of Congress Relating To Bankruptcy.

The undersigned creditor of The City of Coral Gables, Florida, being the owner and holder of Refunding Bonds of said City, listed below, dated January 1, 1937, maturing July 1, 1977, with July 1, 1940 and subsequent coupons attached, said bonds being outstanding as result of the partial completion or execution of the plan of composition evidenced by Ordinance No. 269, as amended by Ordinance No. 289 of the City Commissioner of The City of Coral Gables, Florida, adopted by the said City Commission on the 23rd day of December A. D. 1939, for the composition of the debts of the said City and pursuant to which ordinance as amended said Refunding Bonds, hereinafter listed and owned and held by the undersigned, were issued; and the undersigned creditor being the owner and holder of Tax Participation Certificates were issued and outstanding as the result of the partial completion or execution of the aforesaid plan evidenced by the said ordinances, which said plan of composition was re-adopted by Ordinance No. 347 adopted on the 5th day of March, 1940 as a plan for the composition of the debts of the said City, *hereby accepts and consents to the aforesaid plan of composition adopted by the said City by said Ordinance No. 269 amended as aforesaid and re-adopted by Ordinance No. 347 on the 5th day of March 1940, and to be presented by a petition to the United States District Court for the Southern District of Florida, for the completion of said plan for the composition of said debts under the aforesaid plan in accordance with Chapter IX of the Acts of Congress re-*

lating to bankruptcy, as amended by Acts of Congress approved June 22, 1939.

Dated this ..... day of ....., 1940.

Witnesses:

..... Creditor .....
..... Address .....

Series	Bond Numbers	Aggregate Par Amount

Series	Tax Participation Certificate Numbers	Aggregate Par Amount

On June 27, 1940 Order was filed (Recorded in Minute Book 20, page 886) in words and figures as follows:

80 (Caption Omitted.)

Upon consideration of the petition of The City of Coral Gables, Florida, filed in this Court on the 27th day of June, A. D. 1940, for relief under the provisions of Sections 81, 82, 83 and 84 of Chapter Nine of the Acts of Congress relating to Bankruptcy, as Amended, and the Court having had explained and having considered such petition, and having heard and considered the evidence adduced and the argument of counsel, and the Court being satisfied that said petition complies with the said Acts of Congress, Sections 81, 82, 83 and 84 of Chapter Nine, relating to Bankruptcy, as Amended, and that said petition has been filed in good faith;

It Is Hereby Ordered that said petition be and the same is hereby approved as properly filed under the

provisions of the Acts of Congress relating to Bankruptcy, and that such petition has been and is hereby adjudged to have been filed in good faith within the meaning of Sections 81, 82, 83 and 84, inclusive, of Chapter Nine of the Acts of Congress relating to Bankruptcy, as amended.

It Is Further Ordered:

1. That a hearing will be held before this Court in the above entitled cause on the 21st day of September, A. D. 1940, at the hour of 10 o'clock A. M., on said day, in the United States District Court Room, at Miami, Dade County, Florida, for the purpose of considering said petition and all answers which may be filed controverting any of the material allegations thereof, and for the purpose of considering the plan of composition as referred to and set forth in said petition, and any objections of creditors of the said The City of Coral Gables, Florida, and in case the material allegations of said petition are sustained, for the further purpose of classifying all creditors of said petitioner according to the nature of their respective claims, and interests, and for all other acts and purposes necessary to the confirmation of said plan of composition and the carrying out of this proceeding.

2. That all claims and interests of creditors of petitioner to be affected by said plan of composition of petitioner must be filed or evidenced herein by the filing of proofs of claims for such claims and interests by said creditors within sixty (60) days subsequent to the entry of this order; that said proofs of claims and interests shall be filed with the Clerk of this Court and shall be entitled in this cause and shall consist of statements in writing filed and verified by the creditors, or their duly authorized agents or attorneys or representatives, setting

forth the name of the bond issues, serial numbers and denominations of all bonds and matured unpaid coupons upon which the claim is based, and in the event any claim and interest is based upon a judgment procured in a suit upon such bonds and/or coupons, such proof of claim shall set forth the date of such judgment, the Court in which the same was rendered, the title and number of the case, the name of the bond issues, serial numbers and denominations of the bonds and/or coupons upon which the judgment was rendered, and the amount of the judgment, showing what part thereof consists of coupons, interest on coupons to the date of judgment, principal of bonds, interest on bonds to the date of judgment, and interest on judgment since the date thereof, and Court costs.

That bonds and/or coupons upon which proofs of claims are filed need not be presented or filed with such proofs of claims provided, however, that such bonds and/or coupons must be produced by the claimant thereof in case the Court shall deem it necessary and advisable to require the production of the same, and in case the plan of composition be confirmed, said bonds and/or coupons must be produced and deposited in accordance with the terms of the plan of composition or the further order of this Court in order to entitle the claimant thereof to participate in the plan; proofs of claims and interests duly approved and filed in accordance with the provisions of this order shall be deemed to have been allowed, subject, however, to objections by any party in interest and reconsideration of said allowance of said claim may be had upon due notice and hearing in such manner as this Court may hereinafter determine.

3. That the petitioner shall give notice to its creditors of the filing of this petition and its approval as being properly filed and of the time and manner of filing

claims and of the time and place of the hearing above referred to; that said notice shall be in the following form, to-wit:

(Caption of Cause.)

Notice to Creditors of The City of Coral Gables, Florida.
You and Each of You are Hereby Notified:

That the above named petitioner, The City of Coral Gables, Florida, did on the 27th day of June, A. D. 1940 file in the above entitled Court in the above entitled proceedings, its petition for the composition of its indebtedness evidenced by outstanding bonds and interest coupons appertaining thereto and outstanding judgments and interest thereon.

You are Further Notified that on the 27th day of June, A. D. 1940, by order entered in said cause, said petition of The City of Coral Gables, Florida, was approved as properly filed under Chapter Nine, Acts of Congress relating to Bankruptcy, as Amended, and it was adjudicated that the said petition had been filed in good faith, and that said order so entered did further direct that all claims and interests of creditors of petitioner to be affected by said plan of composition, must be filed or evidenced herein by the filing of proofs of claims for such claims or interests by creditors within sixty (60) days subsequent to the entry of said order.

That said proofs of claims and interests shall be filed with the Clerk of this Court and shall be entitled in this cause and shall consist of statements in writing filed and verified by the creditors, or their duly authorized agents or attorneys or representatives, setting forth the name of the bond issues, serial numbers and denominations of all bonds and matured unpaid coupons upon

which the claim is based, and in the event a claim is based upon a judgment procured in a suit upon such bonds and/or coupons, such proof of claim shall set forth the date of such judgment, the Court in which the same was rendered, the title and number of the case, the name of the bond issue, serial numbers and denominations of the bonds and/or coupons upon which the judgment was rendered, and the amount of the judgment, showing what part thereof consists of coupons, interest on coupons to the date of judgment, principal of bonds, interest on bonds to date of judgment, and interest on judgment since the date thereof and Court costs; that bonds and/or coupons, upon which proofs of claims are filed need not be presented or filed with said proofs of claims provided, however, that such bonds and/or coupons must be produced by the claimant thereof if so ordered and the Court shall deem it necessary and advisable to require the production of the same, and in case the plan of composition be confirmed, said bonds and/or coupons must be produced and deposited in accordance with the terms of the plan of composition or the further order of this Court in order to entitle the claimant thereof to participate in the plan of composition.

That proofs of claims and interests duly approved and filed in accordance with the provisions of this order shall be deemed to have been allowed, subject, however, to objections by any party in interest, and reconsideration of said allowance of said claim may be had upon due notice and hearing in such manner as this Court may hereafter determine.

That a hearing in the above entitled cause be held on the 21st day of September, A. D. 1940, at 10 o'clock A. M. in the United States District Court Room, at Miami, Dade County, Florida, for the purpose of considering said pe-

tition and all answers which may be filed controverting any of the material allegations thereof, and for the purpose of considering the plan of composition as referred to and set forth in said petition and any objections of creditors of the said The City of Coral Gables, Florida; and in case the material allegations in said petition are sustained, for the further purpose of classifying all creditors of said petitioner according to their respective claims and interests, and for all other acts and purposes necessary to the confirmation of said plan of composition and the carrying out of this proceeding.

Dated: Miami, Florida, June 27th, 1940.

THE CITY OF CORAL GABLES, FLORIDA,
By PAUL D. McGARRY,
Mayor, Petitioner.

G. N. SHAW,
Clerk.

4. That said petitioner shall cause such notice to be published at least once a week for three (3) consecutive weeks in The Miami Herald and The Miami Daily News, each a newspaper of general circulation in the City of Miami, County of Dade, State of Florida, and within the jurisdiction of this Court, and further to be published once a week for three (3) consecutive weeks in the Bond Buyer, a paper or magazine published in the City of New York, State of New York, having general circulation among bond dealers, bondholders and bond owners; that petitioner shall cause a copy of the foregoing notice to be mailed, postage prepaid, to each creditor of said petitioner, The City of Coral Gables, Florida, named in the petition at the address of such creditor given in the petition.

It is further ordered that such notice shall first be published as aforesaid and the mailing of the copies thereof shall be completed not less than sixty (60) days before the date set for the hearing hereinbefore referred to.

5. It is further ordered that the Court reserves full right, authority and jurisdiction from time to time to make such other and further orders as this Court may deem proper and necessary in exercising any of the powers of authority conferred under the provisions of Sections 81, 82, 83 and 84, inclusive, of Chapter Nine of the Acts of Congress relating to bankruptcy, as amended, and from time to time make such orders and decrees as may be proper or necessary in this proceeding.

Done And Ordered in Chambers in The City of Miami, Dade County, Florida, this 27th day of June, A. D. 1940.

JOHN W. HOLLAND,
District Judge.

On July 13, 1940 Petitioner filed Motion to Amend Petition for Composition in words and figures as follows, to-wit:

86 MOTION TO AMEND PETITION.

(Title Omitted.)

To: The Honorable, the Judges of the United States District Court in and for the Southern District of Florida:

Comes now the petitioner, The City of Coral Gables by its undersigned attorneys, and respectfully shows unto the Court that in listing the names of the owners and holders of original bonds not exchanged for the Refund-

ing Issues and not consenting to or accepting the plan of composition as shown in Exhibit "C" of the petition, an inadvertent error was made in failing to show that the petitioner is advised and believes and therefore alleges that Ed. C. Wright of St. Petersburg, Florida, is owner of some interest in each of the bonds and coupons listed as being owned by the American National Bank of Nashville, Tennessee.

Wherefore your petitioner moves the Court for an order amending Exhibit "C" to the petition so as to show, in addition to the name "American National Bank of Nashville, Tennessee" as owner of said bonds and coupons listed therein, the name "and Ed. C. Wright of St. Petersburg, Florida" so that said Exhibit "C" shall read everywhere the bank's name is mentioned, "American National Bank of Nashville, Tennessee and Ed. C. Wright of St. Petersburg, Florida."

This the 13th day of July, A. D. 1940.

MORTON B. ADAMS,
City Attorney.
D. H. REDFEARN,
By MBA,
IRA HAYCOCK,
By MBA,
Attorneys for Petitioner.

On July 13, 1940 Order Amending Petition was filed in words and figures as follows, to-wit:

87 ORDER AMENDING PETITION.

(Title Omitted.)

This cause came on to be heard upon the motion of the petitioner for leave to amend the petition by chang-

ing the name "American National Bank of Nashville, Tennessee" to read "American National Bank of Nashville, Tennessee and Ed. C. Wright of St. Petersburg, Florida" as the owners of the several bonds and coupons listed in Exhibit "C" to the petition as owned by the said bank alone. The Court being fully advised in the premises it is hereby ordered that Exhibit "C" to the petition be and the same is hereby amended so that said petition shall show as owner "American National Bank of Nashville, Tennessee and Ed. C. Wright of St. Petersburg, Florida" of all the bonds and coupons now listed in the said exhibit as owned by the "American National Bank of Nashville, Tennessee" alone.

It is further ordered that the City Attorney be and he hereby is authorized to interline on Exhibit "C" a cross reference to this order so as to clarify the record.

Done and ordered in Chambers in the City of Miami, Dade County, Florida, this 13th day of July, A. D. 1940.

JOHN W. HOLLAND,
District Judge.

On July 15, 1940, Petitioner filed motion for stay order in words and figures as follows, to-wit:

88 MOTION FOR STAY ORDER.

(Title Omitted.)

To: The Honorable, the Judges of the United States District Court in and for the Southern District of Florida:

Comes now the petitioner, The City of Coral Gables, by its undersigned attorneys, and respectfully shows: that

on the Twenty-seventh day of June, A. D., 1940, there was filed in this Court by your petitioner, a petition for the composition of debts under Sections 81, 82, 83 and 84 of Chapter 9 of the Acts of Congress relating to bankruptcy as amended and on said date an order was entered in this cause approving the petition as being properly filed and fixing a time and place for a hearing on said petition and other requisites as to giving notice to creditors.

Your petitioner further shows to the Court that there are now pending certain suits against the petitioner on account of securities affected by the plan of composition submitted in this proceeding and to enforce the levy of taxes for the payment of obligations under some of such securities; six of said suits are now pending in the Miami Division of the United States District Court for the Southern District of Florida, in each of which the creditors have secured final judgments against the petitioner upon its bonds, coupons and interest thereon. Peremptory writs of mandamus requiring the petitioner to make certain spread ear-marked tax levies to pay said judgments and interest on the same have been issued. In each of said six suits the petitioner has made the required levies and has paid all of the proceeds from said special levies to the respective creditors. As shown in Exhibit "C" to the petition filed in this case large balances are still outstanding on said final judgments. The names of the creditors and the docket numbers of their respective suits against the petitioner are as follows:

	Creditor	Docket No.
(1)	Augustus T. Ashton	2441 M-Civil
(2)	Fiduciary Counsel Inc.	2442 M-Civil
(3)	Lois Harmon	2466 M-Civil
(4)	W. J. Noel	2375 M-Civil

(5)	C. J. Root	2333 M-Civil
(6)	G. E. Vallette	2512 M-Civil

There is also pending in the Eleventh Judicial Circuit of the State of Florida in and for Dade County, in Common Law, No. 18,569-D, a mandamus suit in which American National Bank of Nashville, Tennessee, is the relator and your petitioner is the respondent. This suit seeks to compel the petitioner to pay over to it as the owner and holder of certain matured coupons of the petitioner's old bonds, monies on hand collected from taxes levied and appropriated to service Refunding Bonds and Tax Participation Certificates of January 1, 1937 Issue authorized to be but not yet issued, which monies are now held by the petitioner for delivery with the Refunding Bonds, immature coupons and Tax Participation Certificates in exchange for old outstanding bonds and coupons. Final judgment dismissing the suit was entered in said cause June 25, 1940. The said creditor expressed an intention to take the suit to the Supreme Court of Florida by writ of error, and the time for such an appeal has not yet expired. The said creditor, American National Bank of Nashville, Tennessee, claims to be the owner and holder of other old past due bonds and coupons of the petitioner which are affected by the plan of composition and there are other such outstanding bonds and coupons as listed in Exhibit "C" to said petition.

All allegations of the petition pertinent to this motion are hereby adopted by reference and made a part hereof.

Your petitioner further shows to the Court that pending the determination of the matter set forth in the petition for composition of debts aforesaid, that the above entitled causes, each and every of them, should be stayed and enjoined from proceeding further until the further order of this Court or until such time as the Court shall

determine that either or any of the above entitled causes should proceed further.

Wherefore, the petitioner prays that the Court enjoin and stay the further progress of each of said hereinabove mentioned suits pending the determination of this cause and to enjoin and stay the commencement of any suit against the petitioner, or any officer or inhabitant of the petitioner, on account of the securities of the petitioner affected by its plan of composition, or to enforce any lien or to enforce the levy of taxes for the payment of obligations under any such securities, or any suit or process to levy upon or enforce against any property acquired by the petitioner through foreclosure of any such tax lien, and

The petitioner further prays that a decree be entered providing that the plan of composition shall be temporarily operative with respect to all securities affected thereby, and that the payment of the principal or interest or both of such securities shall be temporarily postponed or extended or otherwise adjusted in the same manner and upon the same terms as if such plan of composition had been finally confirmed and put into effect.

This the 15th day of July, A. D. 1940.

MORTON B. ADAMS,
City Attorney,
D. H. REDFEARN,
By MBA
IRA C. HAYCOCK,
By MBA
Attorneys for Petitioner.

On August 3, 1940 temporary injunction and stay order was filed in words and figures as follows, to-wit:

TEMPORARY INJUNCTION AND STAY ORDER.

91 (Title Omitted.)

The City of Coral Gables, a municipal corporation of Florida, having filed its petition for a composition of its debts under Sections 81, 82, 83 and 84 of Chapter 9 of the Acts of Congress Relating to Bankruptcy, as amended, setting forth its proposed plan of composition, and this Court having on the 27th day of June, A. D. 1940 entered an order approving the said petition as properly filed under said law, and the petitioner having heretofore filed in this cause its motion to enjoin and stay the commencement or continuation of suits against the petitioner upon securities affected by the said plan, and the said motion having come on for hearing upon notice to the plaintiffs and relators in all suits listed in said motion and hereinafter referred to, and upon due consideration thereof and argument of counsel, and it appearing to the Court that the further prosecution of the suits hereinbelow listed would seriously imperil the rights of the petitioner to the relief prayed for in the said petition for the composition of its debts, and the Court being fully advised in the premises;

It Is Ordered And Adjudged:

That the said motion of The City of Coral Gables, the petitioner, be and the same is hereby granted, excepting that the petitioner shall not be relieved from making the special ear-marked tax levies required under now existing peremptory writs of mandamus as hereinbelow provided;

It Is Further Ordered And Adjudged:

That the following named plaintiffs and relators in the following named suits be and they are each hereby enjoined from the further prosecution of said suits except as hereinbelow provided and the said suits be and they are each hereby stayed except as hereinbelow provided, pending the determination of this matter or until the further order of this Court:

A. In the United States District, Southern District of Florida, Miami Division, United States of America, ex rel Augustus T. Ashton, Relator, versus The City of Coral Gables, Respondent, No. 2441 M-Civil, pending on peremptory writ of mandamus for spread tax levy.

B. In the United States District, Southern District of Florida, Miami Division, United States of America, ex rel Fiduciary Counsel Inc., Relator, versus The City of Coral Gables, Respondent, No. 2442 M-Civil, pending on peremptory writ of mandamus for spread tax levy.

C. In the United States District, Southern District of Florida, Miami Division, United States of America, ex rel Lois Harmon, Relator, versus The City of Coral Gables, Respondent, No. 2466 M-Civil, pending on peremptory writ of mandamus for spread tax levy.

D. In the United States District, Southern District of Florida, Miami Division, United States of America, ex rel W. J. Noel, Relator, versus The City of Coral Gables, Respondent, No. 2375 M-Civil, pending on peremptory writ of mandamus for spread tax levy.

E. In the United States District, Southern District of Florida, Miami Division, United States of America, ex rel

C. J. Root, Relator, versus The City of Coral Gables, Respondent, No. 2333 M-Civil, pending on peremptory writ of mandamus for spread tax levy.

F. In the United States District, Southern District of Florida, Miami Division, United States of America, ex rel G. E. Vallette, Relator, versus The City of Coral Gables, Respondent, No. 2512 M-Civil, pending on peremptory writ of mandamus for spread tax levy.

G. In the Eleventh Judicial Circuit of Florida in and for Dade County, State ex rel American National Bank of Nashville, Tennessee, Relator, versus The City of Coral Gables, Respondent. Common Law No. 18,569. Alternative writ of mandamus dismissed—time for appeal not yet expired.

Provided, However, that the foregoing injunction and stay shall not relieve the said petitioner from the duty of making the several special spread tax levies as required by the several writs of mandamus in the hereinabove listed suits against the petitioner, and the petitioner be and it is hereby required to make each and every of the aforesaid special spread tax levies and to collect the same;

Provided Further, However, that the proceeds of said special spread tax levies and the proceeds of delinquent special tax levies made pursuant to the above listed peremptory writs of mandamus, be held by the petitioner herein and not to be disbursed except by further order of this Court.

It Is Further Ordered And Adjudged:

That the plan of composition described in the petition in this cause shall be temporarily operative with respect to all securities and judgments upon such securities, affected thereby as listed in said petition and that the levy

of the taxes authorized and agreed to be levied in said plan shall be made by the petitioner, and the petitioner shall also make the spread levies hereinabove referred to and ordered to be made, until further orders of this Court; and that the payment of the principal or interest, or both, of all unrefunded securities and of judgments against the petitioner upon such securities, be and it is hereby temporarily postponed in the same manner and upon the same terms as if such plan of composition had been finally confirmed and put into effect, and pending the final determination of this matter or until the further order of this Court, the petitioner shall fully perform all of its obligations under its plan of composition as to all outstanding obligations of the petitioner affected thereby, and shall also make the said spread levies hereinabove ordered and directed to be made.

It Is Further Ordered And Adjudged:

That service of a copy of this order upon each of the parties to the foregoing pending suits or upon their respective attorneys of record shall be made personally or by mail and such service shall be sufficient service of this order and that a duly certified copy of this order also be transmitted to the Clerks of the respective Courts wherein said suits are now pending.

Done And Ordered at Miami, Dade County, Florida this 26th day of July, A. D. 1940.

CURTIS L. WALLER,
U. S. District Judge.

Filed August 3, 1940.

Attest: A true copy.

(Seal)

EDWIN R. WILLIAMS,
Clerk, U. S. District Court,
Southern District of Florida.
By ALBERT E. CALL,
Deputy Clerk.

On August 24, 1940 Proof of Claim of Ed C. Wright & Company was filed in words and figures as follows, to-wit:

94 PROOF OF CLAIM.

(Title Omitted.)

At St. Petersburg, in the County of Pinellas, State of Florida, on the 23rd day of August, A. D. 1940, came Ed. C. Wright who by me being duly sworn deposes and says that he is President of Ed. C. Wright & Company, a corporation organized and existing under the laws of the State of Florida, that as such he has authority to make this deposition.

That the City of Coral Gables, Florida, petitioner herein, is justly indebted to Ed. C. Wright & Company as the owner and holder of the following bonds and securities issued by said City of Coral Gables, Florida:

Bonds		Coupons & Accrued Interest to 6/27/40
$ 22,000	Perm. Imp. 5½% dtd 12/1/25:	
	1M due 12/1/39, No Coupons, Bd. No. 140	$ 31.47
	4M due 12/1/42, 12/1/40 sca, Bds. Nos. 182, 183, 185, 199	15.88
	2M due 12/1/44, 12/1/40 sca, Bds. Nos. 233, 234	7.94
	6M due 12/1/45:	
	5M 12/1/40 sca, Bd. Nos. 251-255	19.85
	1M 12/1/39 sca, Bd. No. 270	58.97

Bonds		Coupons & Accrued Interest to 6/27/40
	8M due 12/1/46:	
	5M 12/1/40 sca, Bd. Nos. 251-255 ..	19.85
	3M 12/1/31 sca, Nos. 280,294,295 ..	1,496.91
	1M due 12/1/47, 12/1/31 sca, Bd. No. 306	498.97
$ 11,000	Perm. Imp. 5½% dtd 4/1/26:	
	5M due 4/1/32, No Coupons, Bd. Nos. 568-572	2,265.70
	2M due 4/1/36, No Coupons, Bd. Nos. 609, 610	466.28
	2M due 4/1/47, 10/1/40 sca, Bd. Nos. 786, 787	26.28
	2M due 4/1/56, 10/1/40 sca, Bd. Nos. 998, 1000	26.28
$ 7,000	Imp. 6% dtd 7/1/26 due 7/1/38, No Coupons, Bds. Nos. 1618-1622, 1654, 1769	835.31
$175,000	Mun. Imp. 6% dtd 1/1/27:	
	4M due 1/1/31, No Coupons, Bd. Nos. 169-171, 179	2,277.32
	1M due 1/1/36, No Coupons, Bd. No. 677	269.33
	3M due 1/1/37, No Coupons, Bd. Nos. 839-841	627.99
	6M due 1/1/38, No Coupons, Nos. 1054-1058, 1064	895.98
	1M due 1/1/39, No Coupons, Bd. No. 1119	89.33
	7M due 1/1/40, No Coupons, Bds. Nos. 1323-1325, 1348, 1424-1426	205.31

Bonds	Coupons & Accrued Interest to 6/27/40
39M due 1/1/41:	
17M 1/1/32 sca, Bd. Nos. 1539, 1646-1651, 1687-1696	9,168.61
1M 1/1/34 sca, Bd. No. 1645	419.33
3M 1/1/40 sca, Bd. Nos. 1642-1644	177.99
18M 7/1/40 sca, Bd. Nos. 1491, 1527, 1534-1536, 1579, 1580, 1625-1630, 1637-1641	527.94
11M due 1/1/42, 7/1/40 sca, Bd. Nos. 1707-1715, 1898, 1899	322.63
5M due 1/1/44:	
1M 1/1/32 sca, Bd. No. 2362	539.33
1M 7/1/30 sca, Bd. No. 2386	629.33
3M 7/1/40 sca, Bd. Nos. 2192, 2256, 2274	87.99
1M due 1/1/45, 7/1/40 sca, Bd. No. 2582	29.33
4M due 1/1/46, 7/1/40 sca, Bd. Nos. 2650-2652, 2815	117.32
16M due 1/1/47, 7/1/40 sca, Bd. Nos. 2940, 2950, 2984, 2985, 2992, 2994, 3017-3020, 3055, 3064, 3065, 3205-3207	469.28
2M due 1/1/49, 7/1/40 sca, Bd. Nos. 3422, 3423	58.66
45M due 1/1/52, 7/1/40 sca, Bd. Nos. 3730-3741, 3745-3747, 3751, 3810-3819, 3823-3826, 3828-3842	1,319.85
3M due 1/1/53, 7/1/40 sca, Bd. Nos. 3853, 3854, 3887	87.99
2M due 1/1/54, 7/1/40 sca, Bd. Nos. 4013, 4030	58.66

	Bonds	Coupons & Accrued Interest to 6/27/40
	6M due 1/1/55, 7/1/40 sca, Bd. Nos. 4224, 4227, 4228, 4239, 4252, 4253 ..	175.98
	19M due 1/1/56, 7/1/40 sca, Bd. Nos. 4259, 4260, 4263-4272, 4283, 4335, 4347-4350, 4372	557.27
$ 3,000	Refunding 6% dtd 6/1/28 due 6/1/38, No Coupons, Bds. Nos. 155-157	372.99
$ 28,000	Refunding 6% dtd 6/15/28 with 6/15/40 Sca:	
	5M due 6/15/40 Bds. Nos. 303-307 ...	160.00
	10M due 6/15/42 Bds. Nos. 356-363, 369, 370	320.00
	3M due 6/15/50 Bds. Nos. 689-691 ...	96.00
	4M due 6/15/53 Bds. Nos. 833-836	128.00
	6M due 6/15/53 Bds. Nos. 837-842	192.00
$ 5,000	Refunding 6% dtd 6/1/29 due 6/1/38, No Coupons, Bds. Nos. 116-120 ...	621.65
$ 1,000	Refunding 6% dtd 1/1/30 due 3/1/32, No Coupons, Bd. No. 1	499.33
$ 1,000	Refunding 6% dtd 7/1/30 due 7/1/49, 7/1/40 Sca, Bd. No. 86	29.33

Totals:—

Bonds	$253,000.00
Coupons & Accrued Int. to 6/27/40	27,301.74
	$280,301.74

Claimant hereby *disapproves* and *rejects* and *objects* to the plan of composition of the indebtedness of the City of Coral Gables, Florida, filed herein.

ED. C. WRIGHT & COMPANY,
(Seal) By ED. C. WRIGHT,
President.

Subscribed and sworn to before me this 23rd day of August, A. D. 1940.

ALVAH C. BELCHER,
(N. S.) Notary Public in and for the County aforesaid.

My Commission expires August 19, 1942.

On August 21, 1940 Proof of Claim of American National Bank of Nashville, Tennessee, was filed in words and figures as follows, to-wit:

97 PROOF OF CLAIM.

(Title Omitted.)

1. At Nashville, in the County of Davidson and State of Tennessee, on the 15th day of August, A. D. 1940, came Paul M. Davis and made oath and said:

2. I am the President of The American National Bank of Nashville, Tennessee, a National banking corporation, with its principal office and place of business in the City of Nashville, County of Davidson and State of Tennessee, hereinafter designated as the claimant. I reside in the City of Nashville, Tennessee and perform the duties of said office of President of said claimant and have knowl-

edge of the facts herein stated. The seal hereto affixed is the seal of said corporation and was affixed by order of its Board of Directors and I have executed this claim under like authority.

3. That the City of Coral Gables, Florida is justly indebted to the claimant, as the bearer and holder of the following described coupons of the City of Coral Gables, Florida, in the aggregate sum of $84,282.50, viz:

$ 2,392.50 (87—$27.50 perm. imp. dtd. 4/1/26.
18—$27.50 cpns. due 2 ea. 4/1/36-4/1/40
Bds. Nos. 786, 787.
5—$27.50 cpns. due 4/1/32 Bds. Nos. 568-572.
24—$27.50 cpns. due 2 ea. 10/1/30-4/1/36
Bds. Nos. 609, 610.
40—$27.50 cpns. due 2 ea. 10/1/30-4/1/40
Bds. Nos. 998, 1000.

$53,910.00 (1797—$30) Mun. Imp. dtd. 1/1/27.
16—$30 cpns. due 2 ea. 7/1/36-1/1/40,
Bds. Nos. 1348, 3887.
459—$30 cpns. due 27 ea. 1/1/32-1/1/40, Bds.
Nos. 1707-1715, 2192, 2651, 2652, 2984,
2985, 2992, 2994, 3205-3207, 3422, 3423,
3853, 3854, 4013, 4259, 4260, 4372.
91—$30 cpns. due 13 ea. 1/1/37-1/1/40
Bds. Nos. 3830-3842.
6—$30 cpns. due 3 ea. 7/1/30, 1/1/31,
Bds. Nos. 169-171.
1—$30 cpn. due 1/1/31, Bd. No. 179.
9—$30 cpns. due 1/1/32-1/1/36 Bd. No. 677.
42—30 cpns. due 3 ea. 7/1/30-1/1/37
Bds. Nos. 839-841.
78—$30 cpns. due 6 ea. 1/1/32-1/1/38,
Bds. Nos. 1054-1058, 1064.

15—$30 cpns. due 1/1/32-1/1/39 Bd. No. 1119.
323—$30 cpns. due 19 ea. 1/1/32-1/1/40, Bds. Nos. 1323-1325, 1424-1426, 1491, 1579, 1580, 1625, 1898, 1899, 2256, 2274, 2582, 2650, 2815, 2940, 2950.
220—$30 cpns. due 11 ea. 7/1/30-1/1/40, Bds. Nos. 1527, 1626-1630, 1637-1641.
120—$30 cpns. due 20 ea. 7/1/37-1/1/40, Bds. Nos. 3017-3020, 3055, 3064, 3065, 4030, 4224, 4227, 4228, 4239, 4252, 4253, 4263-4267, 4269.
231—$30 cpns. due 33 ea. 1/1/37-1/1/40, Bds. Nos. 3730-3741, 3745-3747, 3751, 3810-3819, 3823-3826, 3828, 3829, 4268.
8—$30 cpns. due 7/1/36-1/1/40, Bd. No. 4270.
160—$30 cpns. due 8 ea. 7/1/30-1/1/40, Bds. Nos. 4271, 4272, 4283, 4335, 4347-4350.
18—$30 cpns. due 3 ea. 7/1/37-1/1/40, Bds. Nos. 1534-1536.

$ 2,490.00 (83—$30) Imp. dtd. 7/1/26.
65—$30 cpns. due 5 ea. 1/1/32-7/1/34 & 7/1/35-7/1/38 Bds. Nos. 1618-1622.
5—$30 cpns. due 7/1/36-7/1/38 Bd. No. 1769.
13—$30 cpns. due 1/1/32-7/1/34 & 7/1/35-7/1/38 Bd. No. 1654.

$ 8,360.00 (304—$27.50) Perm. Imp. dtd. 12/1/25.
16—$27.50 cpns. due 6/1/32-12/1/39 Bd. No. 140.
54—$27.50 cpns. due 3 ea. 12/1/31-6/1/40 Bds. Nos. 183, 185, 199.
17—$27.50 cpns. due 6/1/32-6/1/40 Bd. No. 182.
68—$27.50 cpns. due 4 ea. 6/1/32-6/1/40 Bds. Nos. 251-254.
100—$27.50 cpns. due 5 ea. 12/1/30-6/1/40, Bds. Nos. 281-285.

9—$27.50 cpns. due 6/1/36-6/1/40 Bd. No. 255.
40—$27.50 cpns. due 2 ea. 12/1/30-6/1/40, Bds. Nos. 233, 234.

$13,860.00 (462—$30) Ref. dtd. 6/15/28.
224—$30 due 14 ea. 6/15/32-12/15/39, Bds. Nos. 303-307, 689-691, 837-842.
238—$30 cpns. due 14 ea. 12/15/31-12/15/39, Bds. Nos. 356-363, 369, 370, 833-836.

$ 1,650.00 (55—$30) Ref. dtd. 6/1/29 due 5 ea. 6/1/33-6/1/38, Bds. Nos. 116-120.

$ 480.00 (16—$30) Ref. dtd. 7/1/30 due 7/1/32-1/1/40, Bd. No. 86.

$ 60.00 (2—$30) Ref. dtd. 1/1/30 due 9/1/31, 3/1/32 Bd. No. 1.

$ 1,080.00 (36—$30) Ref. dtd. 6/1/28 due 3 ea. 12/1/32-6/1/38 Bds. Nos. 155-157.

4. That the total amount due the claimant herein on the aforementioned coupons, as of the date on which the Petitioner herein petitioned for bankruptcy, is the sum of $84,282.50, which total amount this claimant submits as a claim against the petitioner.

THE AMERICAN NATIONAL BANK OF NASHVILLE, TENNESSEE,
By PAUL M. DAVIS,
President.

Acknowledged, subscribed and sworn to before me this 15th day of August, A. D. 1940, by the subscriber, who is personally known to this officer.

MARY F. RAINS,
(N. S.) Notary Public.

My commission expires: April 13, 1944.

On September 10, 1940 Answer and Objections of Ed C. Wright & Company were filed in words and figures as follows, to-wit:

ANSWER AND OBJECTIONS OF ED. C. WRIGHT AND COMPANY, A CREDITOR.

100 (Title Omitted.)

Comes now Ed. C. Wright & Company, a creditor of the City of Coral Gables, Florida, in Dade County, debtor herein, which files this its answer and objections to the plan of composition as filed by the said City, and says:

(1) For answer to paragraph 1 of the petition, respondent admits that the City of Coral Gables (herein sometimes called "debtor") adopted Ordinances Nos. 269 on December 23, 1936, and 289 on September 4, 1937, and propounded to its bondholders what was known as the Readjustment and Refunding Plan of 1937, but respondent denies that said plan was a plan of composition under the Bankruptcy Act, either as originally in force or as amended.

Respondent admits that the City of Coral Gables procured the agreement of most of its creditors to the modified plan, which plan was a voluntary adjustment, and respondent avers that the said creditors so accepting said plan did so irrevocably and unconditionally, surrendering their original obligations and accepting the new obligations in lieu thereof.

(2) For answer to paragraph 2 of the petition, respondent says that it refers to the proceedings in the 11th Judicial Circuit Court of the State of Florida and in the

Supreme Court of Florida, and to Ordinance No. 289, as correctly stating the facts set out in paragraph 2.

(3) For answer to paragraph 3, respondent says that it admits that a total of bonds and coupons of the City of Coral Gables, amounting to $10,522,768.55, were finally and irrevocably refunded and surrendered, in accordance with the provisions of the plan of voluntary adjustment prior to the filing by the City of Coral Gables of any plan of composition.

For answer to the second paragraph of paragraph 3 of the petition, respondent avers that it believes said figures to be true and believes that the total outstanding indebtedness of debtor amounted as of January 1, 1937, to $11,182,584.19, and respondent admits that of said amount, $10,522,768.55 was finally and irrevocably exchanged for refunding securities under the plan of voluntary adjustment, as shown in the first paragraph of said paragraph 3, and that only approximately $659,815.64 (as of date January 1, 1937) of said indebtedness of said City of Coral Gables remains unrefunded and subject to being affected by the present plan of composition.

(4) For answer to paragraph 4, respondent says that it believes the allegations of paragraph 4 to be in substantial agreement with the terms of the plans of composition. Respondent avers that the said terms do not materially affect the holders of the refunding bonds, issue of January 1, 1937, but do materially and adversely affect those holders of bonds of the City of Coral Gables who refused to accept the plan of voluntary adjustment of January 1, 1937, and to receive the refunding bonds provided for thereby.

(5) For answer to paragraph 5, respondent admits the allegations thereof and avers that those creditors of the

City of Coral Gables who accepted the voluntary refunding plan of January 1, 1937, have to the best of this respondent's knowledge, information and belief been receiving the interest contemplated by the said voluntary adjustment plan regularly since the date of their acceptance of said plan and the receipt of the refunding bonds, and have had set aside for their benefit, to the exclusion and detriment of the non-assenting bondholders, a sinking fund, as provided for in the City Ordinances hereinabove referred to; that those creditors of the City of Coral Gables who refused to accept the voluntary adjustment plan have not, since January 1, 1937, received any interest upon their obligations and they have been denied by the Supreme Court of Florida, in the case of *Garland* vs. *W. P. Beach*, 193 So. 297, participation in the sinking fund provided for the refunding bonds, and that as a result, they have suffered a detriment and been discriminated against.

(6) For answer to paragraph 6 of the petition, respondent admits the adoption, on March 5, 1940, by the City of Coral Gables of its Ordinance No. 347, but denies that such Ordinance or any action which was or could be taken thereunder could have had the effect of making the plan of voluntary adjustment of January 1, 1937, a plan of composition in bankruptcy, since, among other reasons:

(a) The financial status of the City of Coral Gables had materially changed between January 1, 1937, and March 1, 1940, and on March 5, 1940, the City of Coral Gables was well able to pay and discharge its then existing debts; and

(b) Those bonds and coupon holders of the City of Coral Gables who had accepted the voluntary adjustment plan had done so irrevocably and unconditionally, accepting same not as a plan of composition in bankruptcy,

but as a voluntary adjustment plan, and finally surrendering their old bonds and accepting their new scaled-down bonds, and that under the laws and jurisprudence of the State of Florida, the said assenting bondholders were precluded from being restored to the *status quo ante*.

(7) For answer to paragraph 7 of the petition, respondent admits that there have been exchanged and canceled old bonds of the outstanding series and other debts and interest, substantially as listed in Exhibit E filed with the petition, and that the old bonds and coupons so exchanged have been canceled by the City of Coral Gables, and the debts have been released and satisfied. Respondent denies, however, that this action was taken in partial completion of a plan of composition, but avers that same was irrevocable and unconditional, in full settlement as to each bondholder of the plan of voluntary adjustment, and that under the laws and jurisprudence of the laws of the State of Florida, bond and coupon holders who thus accepted the plan of voluntary adjustment and surrendered their bonds and coupons were precluded from being restored to the *status quo ante*.

Respondent admits that for the old bonds and other debts so delivered for exchange, together with interest coupons and interest on matured bonds and interest on said debts, there have been delivered to the various and sundry creditors of the debtor the new evidences of indebtedness described and listed in Exhibits A and B, as set out in the petition, the said deliveries having been made in complete settlement, insofar as each individual creditor was concerned, of the plan of voluntary adjustment and not in partial completion of a plan of composition.

Respondent avers that it denies, for lack of information, the allegation that none of the refunding bonds and tax

participation certificates listed in Exhibits A and B are owned, held and controlled by petitioner.

(8) For answer to paragraph 8 of the petition, respondent avers that it believes that the list, Exhibit C, referred to therein, is a correct list, but it asks that strict proof be made by petitioner.

(9) For answer to paragraph 9 of the petition, respondent avers that, as above set out, the plan propounded by Ordinances 269 and 289, Exhibits 1 and 2 was in no sense a plan of composition in bankruptcy, but was a plan of voluntary adjustment; that said plan contemplated no coercion and no collective action, but was confined to voluntary and individual action by the security holders; that those creditors of the City of Coral Gables who accepted said plan of voluntary adjustment, surrendered their original bonds and coupons, and received refunding bonds, are in no wise affected by the present proposed plan of composition and are in a different classification from those of the creditors of the City of Coral Gables who refused to accept the plan of voluntary adjustment, and that for that reason their consents may not be used to coerce into the proposed plan of composition the non-assenting bondholders of the City of Coral Gables, including this respondent, and that if there be excluded from the consents attached to debtor's petition the consents of those parties who are not affected by the plan and who are not in the same classification as are the creditors who are affected by the plan, there will not remain the consents of the 51% of the creditors affected by the plan which under the statute are required to vest this Court with jurisdiction of this proceeding.

Respondent avers that it denies for lack of information the allegation that none of the consenting securities are owned, held or controlled by the petitioning debtor.

(10) The allegations of paragraph 10 are denied for lack of information.

(11) For answer to the first paragraph of paragraph 11, respondent admits that the assessed valuation of all taxable property for the year 1939 is the sum of approximately $24,069,877.00. The remainder of the allegations of said paragraph are denied, except that respondent admits that the City of Coral Gables assesses the taxable property on its rolls at larger sums than the same is assessed for taxation purposes by the County of Dade, Florida; but respondent avers that the said County of Dade fails signally to assess the property on its rolls at its true taxable value.

The allegations of the second paragraph of paragraph 11 are denied for lack of information.

The allegations of the third paragraph of paragraph 11 are denied for lack of information.

The allegations of the fourth paragraph of paragraph 11 are denied, except that:

(a) Respondent admits that there has been a depression beginning with the year 1929.

(b) Respondent admits that as a result of said depression, it has from time to time been difficult for certain persons to pay their taxes.

But respondent avers that the City of Coral Gables is, and at the time of the filing of this petition was, in a position where it could readily and easily have refunded its valid outstanding obligations in the local market on a fair basis, had it so desired, and that respondent is prepared to and now offers to guarantee that a bid at par

and accrued interest will be made should the debtor, the City of Coral Gables, offer at public sale an issue of 5% serial refunding bonds sufficient to take up all of its defaulted bonds and coupons; and respondent avers that it has on more than one occasion endeavored, without success, to interest the officials of the City of Coral Gables in the refinancing of its obligations outside of the Bankruptcy Court on terms well within the powers of said City.

The allegations of the final paragraph of paragraph 11 are denied, and respondent avers that it is informed and believes that in those cases in which mandamuses issued against the debtor, City of Coral Gables, the terms and conditions of the writ as finally issued were arrived at by stipulation between the petitioner and the responsible officials of the City of Coral Gables; and respondent avers that, as set forth in the preceding paragraph, the City of Coral Gables could readily take care of its obligations by the issuance of serial 5% refunding bonds.

(12) Respondent calls for strick proof of the allegations of paragraph 12.

(13) For answer to paragraph 13, respondent denies that at the time of the filing of this petition, or at the time of the propounding of any plan of composition under the Bankruptcy Act, the outstanding indebtedness of the debtor was so great that it was impossible for the debtor to pay same, and denies that debtor is insolvent and unable to pay its indebtedness as same has matured, is maturing, and will mature in the future.

(14) The allegations of paragraph 14 are denied. Respondent particularly denies that those holders of obligations of the City of Coral Gables who accepted the plan

of January 1, 1937, surrendered their old bonds and coupons and received new ones are in any wise affected by the present proposed plan of composition, and denies that there are appended to the said petition consents of 51% of the outstanding securities affected by the plan, exclusive of those owned, held or controlled by the debtor.

Respondent reiterates what it has said above concerning Ordinance Nos. 347, 289, and 269 and the conditions upon which said Ordinances were adopted.

The remaining allegations of paragraph 14 are denied for lack of information.

Respondent moreover specifically denies that the creditors of the City of Coral Gables are correctly classified, it averring that the classification should be rearranged in accordance with the facts hereinabove set out.

(15) The allegations of Article 15 are denied, and avers the facts to be as above stated.

(16) Further answering, respondent avers:

(a) That the consents of those security holders of the City of Coral Gables who have already accepted refunding bonds and who, as above stated, are in a separate classification from those who have refused to accept refunding bonds can not be used to coerce into acceptance of a plan of composition which does not affect them the holders of original unrefunded bonds who are materially and adversely affected by said plan.

(b) That neither the original Bankruptcy Act, nor subsection (j) of Section 83 thereof, Chapter 11 U. S. C. A. (403j), when properly construed permits the consents

of the holders of these refunding bonds to be used to coerce the holders of unrefunded bonds.

(c) That to construe sub-section 83(j) of the Bankruptcy Act as permitting the use of such consents would be to construe sub-section 83(j) as conflicting with the plain provisions of the other portions of that Act.

(d) That to construe sub-section (j) of Section 83 of the Bankruptcy Act (11 U. S. C. A. 403 (j)) as authorizing the use of the consents of those creditors who are not affected by the plan and who are in a separate classification from creditors who are affected by the plan to coerce creditors affected by the plan into accepting the plan, would have the effect of making sub-section 83(j) illegal, null and void, as depriving such affected creditors of due process of law and of the equal protection of the law, in violation of the provisions of the Constitution of the United States, particularly Amendment V.

Wherefore, this respondent prays that the plaintiff's petition be dismissed, and for such other and further orders as may be necessary in the premises; and for costs and general relief.

JOSEPH P. LEA, JR.,

Joseph P. Lea, Jr.,
705 Fla. Natl. Bank Bldg.,
St. Petersburg, Fla.

J. BLANC MONROE,
Attorneys for Respondent.

Monroe & Lemann,
New Orleans, La.

On September 10, 1940 Answer and Objections of American National Bank of Nashville, Tennessee, were filed in words and figures as follows, to-wit:

107 ANSWER AND OBJECTIONS OF THE AMERICAN NATIONAL BANK OF NASHVILLE, TENNESSEE, A CREDITOR.

(Title Omitted.)

Comes now The American National Bank of Nashville, Tennessee, a National Banking Corporation, a creditor of the City of Coral Gables, Florida, in Dade County, debtor herein, and with full reservation of the points raised in its motion to dismiss, which are here reiterated as though set out in extenso, files this its answer and objections to the plan of composition as filed by the said City, and says:

(a) This respondent, as set out in its motion to dismiss, is a holder of unrefunded bonds and coupons of the City of Coral Gables, in the amount of $84,282.50, and is materially and adversely affected by the proposed plan of composition.

(b) For answer to the petition of debtor, this respondent shows:

(1) For answer to paragraph 1 of the petition, respondent admits that the City of Coral Gables (herein sometimes called "debtor") adopted Ordinances Nos. 269 on December 23, 1936 and 289 on September 4, 1937, and propounded to its bondholders what was known as the Readjustment and Refunding Plan of 1937, but respondent denies that said plan was a plan of composition under

the Bankruptcy Act, either as originally in force or as amended.

Respondent admits that the City of Coral Gables procured the agreement of most of its creditors to the modified plan, which plan was a plan of voluntary adjustment, and respondent avers that the said creditors so accepting said plan did so irrevocably and unconditionally, surrendering their original obligations and accepting the new obligations in lieu thereof.

(2) For answer to paragraph 2 of the petition, respondent says that it refers to the proceedings in the 11th Judicial Circuit Court of the State of Florida and in the Supreme Court of Florida, and to Ordinance No. 289, as correctly stating the facts set out in paragraph 2.

(3) For answer to paragraph 3, respondent says that it admits that a total of bonds and coupons of the City of Coral Gables, amounting to $10,522,768.55, were finally and irrevocably refunded and surrendered, in accordance with the provisions of the plan of voluntary adjustment prior to the filing by the City of Coral Gables of any plan of composition.

For answer to the second paragraph of paragraph 3 of the petition, respondent avers that it believes said figures to be true and believes that the total outstanding indebtedness of debtor amounted as of January 1, 1937, to $11,182,584.19, and respondent admits that of said amount, $10,522,768.55 was finally and irrevocably exchanged for refunding securities under the plan of voluntary adjustment, as shown in the first paragraph of said paragraph 3, and that only approximately $659,815.64 (as of date January 1, 1937) of said indebtedness of said City of Coral Gables remains unrefunded and subject to being affected by the present plan of composition.

(4) For answer to paragraph 4, respondent says that it believes the allegations of paragraph 4 to be in substantial agreement with the terms of the plan of composition. Respondent avers that the said terms do not materially affect the holders of the refunding bonds, issue of January 1, 1937, but do materially and adversely affect those holders of bonds of the City of Coral Gables who refused to accept the plan of voluntary adjustment of January 1, 1937, and to receive the refunding bonds provided for thereby.

(5) For answer to paragraph 5, respondent admits the allegations thereof and avers that those creditors of the City of Coral Gables who accepted the voluntary refunding plan of January 1, 1937, have to the best of this respondent's knowledge, information and belief been receiving the interest contemplated by the said voluntary adjustment plan regularly since the date of their acceptance of said plan and the receipt of the refunding bonds, and have had set aside for their benefit, to the exclusion and detriment of the non-assenting bondholders, a sinking fund, as provided for in the City Ordinances hereinabove referred to; that those creditors of the City of Coral Gables who refused to accept the voluntary adjustment plan have not, since January 1, 1937, received any interest upon their obligations and they have been denied participation in the sinking fund provided for the refunding bonds, and that as a result, they have suffered a detriment and been discriminated against.

(6) For answer to paragraph 6 of the petition, respondent admits the adoption, on March 5, 1940, by the City of Coral Gables of its Ordinance No. 347, but denies that such Ordinance or any action which was or could be taken thereunder could have had the effect of making the plan of voluntary adjustment of January 1, 1937, a

plan of composition in bankruptcy, since, among oth
reasons:

(a) The financial status of the City of Coral Gab
had materially changed between January 1, 1937, a
March 1, 1940, and on March 5, 1940, the City of Co
Gables was well able to pay and discharge its then exi
ing debts; and

(b) Those bond and coupon holders of the City
Coral Gables who had accepted the voluntary adjustme
plan had done so irrevocably and unconditionally, acce
ing same not as a plan of composition in bankrupt
but as a voluntary adjustment plan, and finally surrend
ing their old bonds and accepting their new scaled-do
bonds, and that under the laws and jurisprudence
the State of Florida, the said assenting bondholders w
precluded from being restored to the *status quo ante.*

(7) For answer to paragraph 7 of the petition,
spondent admits that there have been exchanged a
canceled old bonds of the outstanding series and oth
debts and interest, substantially as listed in Exhibit
filed with the petition, and that the old bonds and c
pons so exchanged have been canceled by the City
Coral Gables, and the debts have been released a
satisfied. Respondent denies, however, that this act
was taken in partial completion of a plan of compositi
but avers that same was irrevocable and unconditio
in full settlement as to each bondholder of the plan
voluntary adjustment, and that under the laws and ju
prudence of the State of Florida, bond and coupon hold
who thus accepted the plan of voluntary adjustment a
surrendered their bonds and coupons are precluded fr
being restored to the *status quo ante.*

Respondent admits that for the old bonds and other debts so delivered for exchange, together with interest coupons and interest on matured bonds and interest on said debts, there have been delivered to the various and sundry creditors of the debtor the new securities described and listed in Exhibits A and B, as set out in the petition, the said deliveries having been made in complete settlement, insofar as each individual creditor was concerned, of the plan of voluntary adjustment and not in partial completion of a plan of composition.

Respondent denies, for lack of information, the allegation that none of the refunding bonds and tax participation certificates listed in Exhibits A and B are owned, held and controlled by petitioner.

(8) For answer to paragraph 8 of the petition, respondent avers that it believes that the list, Exhibit C, referred to therein, is a correct list, but it asks that strict proof be made by petitioner.

(9) For answer to paragraph 9 of the petition, respondent avers that, as above set out, the plan propounded by Ordinances 269 and 289, Exhibits 1 and 2, was in no sense a plan of composition in bankruptcy, but was a plan of voluntary adjustment; that said plan contemplated no coercion and no collective action, but was confined to voluntary and individual action by the security holders; that those creditors of the City or Coral Gables who accepted said plan of voluntary adjustment, surrendered their original bonds and coupons, and received refunding bonds, are in no wise affected by the present proposed plan of composition and are in a different classification from those of the creditors of the City of Coral Gables who refused to accept the plan of voluntary adjustment, and that for that reason their consents may not be used to coerce into the proposed plan of composition the non-

assenting bondholders of the City of Coral Gables, including this respondent, and that if there be excluded from the consents attached to debtor's petition the consents of those parties who are not affected by the plan and who are not in the same classification as are the creditors who are affected by the plan, there will not remain the consents of the 51% of the creditors affected by the plan which under the statute are required to vest this Court with jurisdiction of this proceeding.

Respondent avers that it denies for lack of information the allegation that none of the consenting securities are owned, held or controlled by the petitioning debtor.

(10) The allegations of paragraph 10 are denied for lack of information.

(11) For answer to the first paragraph of paragraph 11, respondent admits that the assessed valuation of all taxable property for the year 1939 is the sum of approximately $24,069,877.00. The remainder of the allegations of said paragraph are denied, except that respondent admits that the City of Coral Gables assesses the taxable property on its rolls at larger sums than the same is assessed for taxation purposes by the County of Dade, Florida; but respondent avers that the said County of Dade fails signally to assess the property on its rolls at its true taxable value.

The allegations of the second paragraph of paragraph 11 are denied for lack of information.

The allegations of the third paragraph of paragraph 11 are denied for lack of information.

The allegations of the fourth paragraph of paragraph 11 are denied except that:

(a) Respondent admits that there has been a depression beginning with the year 1929.

(b) Respondent admits that as a result of said depression, it has from time to time been difficult for certain persons to pay their taxes.

But respondent avers that the City of Coral Gables is, and at the time of the filing of this petition was, in a position where it could readily and easily have refunded its valid outstanding obligations in the local market on a fair basis.

The allegations of the final paragraph of paragraph 11 are denied, and respondent avers that it is informed and believes that in each of those cases in which mandamus issued against the debtor, City of Coral Gables, the terms and conditions of the writ as finally issued were arrived at by stipulation between the petitioner in writ and the responsible officials of the City of Coral Gables; and respondent avers that, as set forth in the preceding paragraph, the City of Coral Gables could readily take care of all of its outstanding obligations by the issuance of serial 5% refunding bonds.

(12) Respondent calls for strict proof of the allegations of paragraph 12.

(13) For answer to paragraph 13, respondent denies that at the time of the filing of this petition, or at the time of the propounding of any plan of composition under the Bankruptcy Act, the outstanding indebtedness of the debtor was so great that it was impossible for the debtor to pay same, and denies that debtor is insolvent and unable to pay its indebtedness as same has matured, is maturing, and will mature in the future.

(14) The allegations of paragraph 14 are denied. Respondent particularly denies that those holders of obligations of the City of Coral Gables who accepted the plan of January 1, 1937, surrendered their old bonds and coupons and received new ones are in any wise affected by the present proposed plan of composition, and denies that there are appended to the said petition consents of 51% of the outstanding securities affected by the plan, exclusive of those owned, held or controlled by the debtor.

Respondent reiterates what it has said above concerning Ordinance Nos. 347, 289, and 269 and the conditions upon which said Ordinances were adopted.

The remaining allegations of paragraph 14 are denied for lack of information.

Respondent moreover specifically denies that the creditors of the City of Coral Gables are correctly classified, it averring that the classification should be rearranged in accordance with the facts hereinabove set out.

(15) The allegations of Article 15 are denied, and avers the facts to be as above stated.

(16) Further answering, respondent avers:

(a) That the consents of those security holders of the City of Coral Gables who have already accepted refunding bonds and who, as above stated, are in a separate classification from those who have refused to accept refunding bonds can not be used to coerce into acceptance of a plan of composition which does not affect them the holders of original unrefunded bonds who are materially and adversely affected by said plan.

(b) That neither the original Bankruptcy Act, nor sub-section (j) of Section 83 thereof, Chapter 11 U. S. C. A. (403j), when properly construed permits the consents of the holders of these refunding bonds to be used to coerce the holders of unrefunded bonds.

(c) That to construe sub-section 83(j) of the Bankruptcy Act as permitting the use of such consents would be to construe sub-section 83(j) as conflicting with the plain provisions of the other portions of that Act.

(d) That to construe sub-section (j) of Section 83 of the Bankruptcy Act (11 U. S. C. A. 403 (j)) as authorizing the use of the consents of those creditors who are not affected by the plan and who are in a separate classification from creditors who are affected by the plan to coerce creditors affected by the plan into accepting the plan, would have the effect of making sub-section 83(j) illegal, null and void, as depriving such affected creditors of due process of law and of the equal protection of the law, in violation of the provisions of the Constitution of the United States, particularly Amendment V.

(17) That the said plan now being propounded to this Court is unfair and inequitable to this respondent, and if put into operation will deprive this respondent of its property without due process of law, and deny to this respondent the equal protection of the law, in violation of the Constitution of the United States, particularly Amendment V, in that the said plan proposes to deliver to certain holders of obligations of the City of Coral Gables interest-bearing bonds of fixed maturity, which are general obligations of said City, whereas the said plan proposes to deliver to the respondent as the holder of a valid and existing past due obligation of the same City of Coral Gables merely a non-interest-bearing

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tax participation certificate, having no fixed maturity, which is not only not a general obligation but is stated to be not even an indebtedness of said City; that neither the Bankruptcy Act nor any amendment to the Bankruptcy Act, including Section 83(j) thereof, contemplates or permits any such discrimination against one holder of a past due obligation in favor of another holder of a past due obligation of the same debtor, particularly when the two obligations are payable, as are these obligations, from the same source and are of equal dignity, the one with the other; and that if the said Bankruptcy Act, or any amendment thereof, including said Section 83(j), be construed as authorizing such discrimination, then said statute so construed is illegal, null and void as in violation of the Constitution of the United States, particularly Amendment V thereof.

(18) Further answering the said petition, this creditor says that the City of Coral Gables, on the 24th day of December, A. D., 1936, entered into a certain deposit agreement with the several persons, firms and corporations being the holders and owners of bonded and other indebtedness of the City of Coral Gables, in which said deposit agreement the bondholders, among other things, agreed to deposit their bonds with the Central Hanover Bank & Trust Company pending the consummation of the voluntary adjustment set out in Ordinances Nos. 269 and 289 and authorized the depository upon the affirmance by the Supreme Court of Florida of the judgment of the Circuit Court in the refunding bond validation proceedings provided for in the said voluntary plan of adjustment to promptly surrender and deliver, or cause to be surrendered and delivered to the city for cancellation the bonds and coupons thereto appertaining in exchange for refunding bonds and tax participation certificates.

It was further provided in the said agreement as follows:

"This agreement shall become operative when proper signatures or consents thereto have been executed upon this document or counterparts thereof, and/or related documents, by "Creditors" having, in the opinion of the City Commission of the City of Coral Gables, a sufficient portion of all unpaid principal indebtedness of the City incurred prior to November 6, 1934 (but in no event less than 90% thereof) to insure that the City will be able to perform the covenants in the Refunding Bonds and to make the Plan for Readjustment and Refunding incorporated herein feasible and practicable."

That thereafter, when holders of more than 90% of the indebtedness of the City deposited their bonds, the plan was declared operative and refunding bonds and tax participation certificates were issued and exchanged for old bonds and the indebtedness theretofore represented by the said old bonds was canceled and discharged.

(19) That the agreement of the 24th of December, 1936, aforesaid, was put into force and effect and completely executed and is not and cannot be considered as partially executed so as to bring the City of Coral Gables within the operation of Section (j) of Chapter IX of the Chandler Act and the holders of bonds issued pursuant to that said agreement have no further rights other than those set forth in their refunding bonds and are not to be affected by the alleged plan of composition.

(20) Further answering said petition alleges that the plan of voluntary adjustment evidenced by that agreement of December 24, 1936 was consummated without the supervision of this Court at an expense of $137,941.34, $80,000.00 of that expense being the fee of Carl L. V.

Excelsen and that this sum has been paid out without this Court determining that the said fees were reasonable, which said expenses, if unreasonable, deprives this objecting creditor of assets to which it might look to the payment of its claim.

(21) Further answering, says that during the fiscal year ending June 30, 1938, after the completion of the voluntary plan of adjustment, the City of Coral Gables sold all of its tax certificates for the years 1932, 1933, 1934 and 1935 aggregating the sum of slightly less than $700,000.00 to the Coral Gables Development Company for the sum of $396,900.00 and agreed that the tax certificates for the years prior to 1931 of a face value of approximately $1,725,000.00 would be canceled upon the written request of the purchaser or they might be used in any foreclosure or other legal proceedings affecting any of the properties covered by the slightly less than $700,000.00 certificates. That this sale of assets in excess of $2,000,000.00 deprives this creditor of assets to which it might have looked for the payment of its coupons and the said sale was contrary to law and the said assets in excess of $2,000,000.00 are still assets of the City of Coral Gables and should be directed to be returned to the said City of Coral Gables by this Court.

(22) Further answering, says that during the fiscal year ending June 30, 1938 the City of Coral Gables purchased refunding securities in the face amount of $507,460.67 at a discount of $163,441.74, the price thereof being $344,018.93, making the price a price of approximately 67% of the securities. That at the time these securities were purchased, similar securities of the City of Coral Gables were selling at a price far lower than the price paid by the City of Coral Gables, thus depriving this creditor of assets to which it might have looked for the payment of its coupons and demonstrating that the City of Coral Gables was able to pay much more than

the amounts they are now proposing to pay under their alleged plan of composition.

Wherefore, this respondent prays that the plaintiff's petition be dismissed, and for such other and further orders as may be necessary in the premises; and for costs and general relief.

BASS, BERRY & SIMS,
By F. H. BERRY,
WYLIE & WARREN,
By STUART B. WARREN,
Attorneys for The American National Bank of Nashville, Tennessee.

On October 12, 1940 Exceptions of Petitioner to Claim of American National Bank of Nashville, Tennessee, were filed in words and figures as follows, to-wit:

118 EXCEPTIONS TO CLAIM OF AMERICAN NATIONAL BANK OF NASHVILLE, TENNESSEE.

(Title Omitted.)

Comes now The City of Coral Gables, Petitioner in the above entitled cause, and

1.

Denies that the claimant, American National Bank of Nashville, Tennessee, acquired and is now the bona fide holder, owner and bearer of the coupons set forth and

referred to in its Claim, and denies that the said coupons were detached from the bonds therein referred to.

2.

Further excepting to the said Claim, the Petitioner says that the alleged coupons referred to in the Claim are not its coupons.

3.

Further excepting to the said Claim, the Petitioner says that the coupons set forth and described by the claimant, American National Bank of Nashville, Tennessee, are not legally enforcible contracts of the Petitioner, The City of Coral Gables, and that the causes of action of the claimant under and by virtue of said coupons did not accrue to the claimant at any time within five (5) years next before the filing of his said Claim, and that the claimant's alleged causes of action on the said coupons are barred by the statutes of limitation in such cases made and provided.

4.

For further exception to the claimant's alleged claim, the Petitioner, The City of Coral Gables, says that the claimant is guilty of laches in failing to apply to the Courts for relief within a reasonable time after the date upon which his causes of action accrued.

Wherefore, Petitioner raises a special issue on the grounds hereinbefore set forth and demands that claimant establish his right to be heard in this cause in the manner provided by law.

MORTON B. ADAMS,
City Attorney,
DAN REDFEARN, MBA
IRA HAYCOCK, MBA
Attorneys for Petitioner.

On September 10, 1940 Motion for order approving modification of Plan of Composition as submitted by Debtor was filed in words and figures as follows, to-wit:

MOTION FOR AN ORDER APPROVING A MODIFICATION OF THE PLAN OF COMPOSITION AS SUBMITTED BY THE DEBTOR.

120 (Title Omitted.)

I.

Comes now the undersigned creditor of the City of Coral Gables, Florida, Bankrupt, and respectfully shows unto the Court that long prior to any proceedings in this Court, and without the judicial supervision of this Court, the City of Coral Gables actually exchanged securities with approximately 94% of its creditors, under which exchange and agreements made with said creditors, the majority of which were represented by a bondholders committee, the aforesaid creditors had the option of either taking the offer made by the said city or rejecting the same without any compulsion or any legal process whatsoever.

(a) That the present plan of composition presented to this Court by the city intends to compel and force only the remaining approximate 6% of the creditors of said City of Coral Gables to take, under the process and on compulsion of this Court, securities of the same dignity as those which the city had voluntarily given to its other creditors.

(b) That the approximate 6% of the city's creditors are the only creditors whose rights will be adjusted under these proceedings and that the holders of the approximate

94% of the city's creditors have no securities which are to be adjusted under these proceedings.

(c) That the only consents appended to this plan of composition are the consents of those holders whose rights are not to be adjusted under these proceedings and who have held securities for a long time prior to any procedure in this Court.

II.

That under the Municipal Bankruptcy Act (11 U. S. C. A. 401-403 (j), provision is made that changes and modifications may be made in any plan of composition with the approval of the Court; that in accordance with the provisions aforesaid, a modification of the plan of composition has been prepared and is attached to this motion, and made a part hereof and marked "Exhibit 1", and is herewith tendered to the Court for its approval as the modified plan of composition.

III.

That the United States District Court for the Southern District of Florida, in the case of In Re: Sarasota, Florida, #3149-T, in a precisely similar situation approved the procedure herein and approved a modified plan submitted by creditors.

IV.

That the United States District Court for the Southern District of Florida, in the case of In Re: Sarasota, Florida, #3149-T, in a precisely similar situation, approved the procedure herein submitted, and approved in that case a modified plan submitted by creditors who held unrefunded securities, under which modified plan an additional

annual debt service levy of approximately 2½ mills will be required, making a total debt service levy of 17½ mills.

V.

That under the modified plan submitted herewith the taxes in the City of Coral Gables, (which has one of the lowest debt service levies in the State of Florida), will not be increased more than ½ mill over the taxes levied and collected for all debt service in the year 1938-1939. This increase for the City of Coral Gables will be only about one-fifth of the increase required in the City of Sarasota case.

VI.

That the total debt service millage in the City of Sarasota, including the increase will be approximately 17½ mills; that the total debt service millage in the City of Coral Gables, including the modified plan would be only approximately 8 mills, or less than one-half that of the City of Sarasota, Florida.

VII.

That the plan submitted by the city does not take into consideration the ability of the city to pay and therefore it would be inequitable for this Court to approve such plan when the city is able to meet the commitments under the modified plan; that the modified plan submitted herein is not only well within the ability of the city to pay, but any plan which does not take into consideration the ability of the debtor to pay would not comply with the provisions of the Municipal Bankruptcy Act (11 U. S. C. A. 401-403).

VIII.

That the United States District Court for the Southern District of Florida, in the case of In Re: Sarasota, Florida, #3149-T, in a precisely similar situation approved the report of the special master therein, finding it would be inequitable and not for the best interest of creditors whose rights were being adjusted under a plan by the City of Sarasota, (the holders of unrefunded securities, under which plan more than 94% of the creditors have irrevocably scaled their indebtedness prior to any proceedings in Court), not to take into consideration the ability of the city to meet the commitments under the modified plan, and thereupon the Court approved a modified plan submitted by the creditors in which a debt service millage of 15 mills was increased to approximately 17½ mills.

IX.

That the plan of composition submitted by the City of Coral Gables does not treat creditors of the same class equally because under such plan the holders of interest items are given different treatment from that of the holders of bonds; that the modified plan submitted herein treats all unrefunded securities, regardless of how they are evidenced, equally; that the modified plan of composition is not materially adverse to the interest of those creditors who had already accepted refunding bonds prior to any action in this Court and whose rights are not being adjusted by these proceedings.

X.

(a) That in the United States District Court for the Southern District of Florida, in the case of In Re: Sara-

sota, #3149-T, in a precisely similar situation, the city filed a petition in bankruptcy under the provisions of section 403-(j) of the Municipal Bankruptcy Act (11 U. S. C. A. 403 (j), and submitted the agreement made by it with 94% of its creditors prior to any proceedings in Bankruptcy Court as its plan of composition.

(b) That under such plan the remaining 6% of its creditors (the holders of unrefunded securities) would have their rights adjusted or modified under the compulsion of the Court.

(c) That thereupon a modified plan was presented by creditors of the City of Sarasota, by which all bonds, coupons and interest items would be treated equally and by which the principal indebtedness was increased far above the amount of that set forth in the city's proposed plan, and under which an increase of approximately 2½ mills was necessary to be added to existing millage of 15 mills to service the interest and sinking fund set up in the modified plan.

(d) That the Court held, in such case, that such modified plan was not materially adverse to the interest of those creditors who had received refunding bonds prior to any proceedings in the Bankruptcy Court, and that no notice of such modifications was necessary to be sent to any creditor holding refunded securities.

XI.

(a) That the City of Coral Gables has alleged to this Court that it is unable to meet its debts as they mature, yet at the same time it is making an annual donation, without consideration, of $25,000.00 to a private educational corporation from the proceeds of a tax levy against the properties in said city.

(b) That such donation by the city is illegal and entirely inconsistent under the circumstances, when the city pleads bankruptcy and its inability to meet its obligations to bondholders.

(c) That the millage necessary to raise said $25,000.00 is more than twice the increase required to service the sinking fund under the modified plan; that this creditor alleges that such donations made by the city, albeit is possibly to a most worthy cause, but that if this sum were applied annually, with the sum of $32,000.00 which the city actually paid some of its creditors holding unrefunded securities, in 1938-1939, on agreements made under writs of mandamus, the city would have more than sufficient monies to service the interest and sinking fund requirements under the modified plan, and would also have an annual surplus of approximately $15,000.00.

Wherefore, motion is respectfully made:

(a) That the Court find, in accordance with the provisions of the Municipal Bankruptcy Act, that the modified plan will not be materially adverse to the interest of those creditors who have already voluntarily accepted refunding bonds of the City of Coral Gables prior to any proceedings in this Court, and that therefore no notice is necessary to be sent to any such creditors.

(b) That the Court approve the modified plan of composition and submit the same to the debtor for its acceptance, in accordance with the provisions of the Municipal Bankruptcy Act.

Respectfully submitted,
JOSEPH P. LEA, JR.,
Attorney for Ed. C. Wright & Co.

125 PROPOSED MODIFIED PLAN OF COMPOSITION OF THE INDEBTEDNESS OF THE CITY OF CORAL GABLES, FLORIDA.

Section 1. Indebtedness of the city proposed to be adjusted by the provisions of this modified plan comprises:

(a) All the outstanding unrefunded, refundable, bonded indebtedness of the City of Coral Gables, Florida, set forth in its proposed Plan of Composition, presently approximating Seven Hundred Thousand Dollars ($700,000.00), and composed of: (1) bonds; (2) all accrued interest on the bonds proposed to be refunded to the date of proposed refunding bonds, whether evidenced by matured interest coupons or otherwise, and (3) judgments which have been obtained against the city on bonds or coupons.

Section 2. It is proposed that the city shall issue its general obligation Refunding Bonds containing a pledge as follows:

"That for the prompt payment of the principal and interest of all said Refunding Bonds as the same shall become due which are issued pursuant to this resolution, the full faith and credit of said City and a tax upon the property within said City are hereby irrevocably pledged to the same extent and with like force and effect as the same were pledged for the payment of the indebtedness refunded by said bonds, and the said City hereby covenants and agrees with the holders of any and all of said refunding bonds and interest coupons issued under the provisions of this resolution that the said City will make prompt payment of the same when due."

Said bonds are to be issued in an aggregate principal amount equal to the total amount of the indebtedness af-

fected hereby and outstanding as of November 1, 1940; and are to be exchanged on the basis of the total amount of the bonds, interest thereon, interest coupons or judgments on such bonds or coupons calculated as of November 1, 1940.

Section 3. Said Refunding Bonds will be dated November 1, 1940, will mature serially over a period of forty years, and bear interest, payable semi-annually, at the rate of 4¾% per annum.

Section 4. The tax support for the Refunding bonds shall be expressed as follows:

"That for the purpose of adequately providing for the payment of the interest coupons and for a sinking fund for the retirement of all of said Refunding Bonds herein authorized to be issued, the said City covenants and agrees with the holders of said Refunding Bonds that in the annual budget and ad valorem tax levy to be prepared and made in each year commencing with the year 1940 and continuing thereafter until all of said Refunding Bonds have been retired, there shall be included a levy of a current ad valorem tax on all property in said City subject to the levy and collection of such tax sufficient to produce the sum of Forty Thousand Dollars ($40,000.00), including and deducting therefrom, at the option of said City, any revenue other than from ad valorem taxes which may be available and which is actually so applied. Such taxes shall be levied and computed upon the extended and finally equalized valuation of all property within said City except only such property as was exempt from taxation under the laws and Constitution of Florida which were in force and effect at the time of the creation of the indebtedness proposed to be refunded hereunder, and, on the basis of the next preceding year's collections, shall be sufficient to produce

said sum of Forty Thousand Dollars ($40,000.00). The taxes so levied shall be in addition to all other taxes levied by or on behalf of said City, and the proceeds thereof are hereby appropriated and shall be used exclusively for the purpose for which the same are levied, and so long as any of said Refunding Bonds are outstanding, the respective annual tax levies shall be increased when necessary to provide sufficient funds for the actual interest and sinking fund requirements of the year next succeeding that in which the budget is being made and prepared."

Section 5. Provision is made that some reputable Bond Brokerage House, qualified to do business in the State of Florida, to be appointed by the Court, shall act as fiscal agent in connection with the refunding of the indebtedness affected hereby, and shall be paid the proceeds of an assessment against participating security holders in an amount to be determined by the Court, but which has now been estimated at $30.00 per $1,000.00 in securities tendered for exchange or ratable portion thereof in case of securities in amounts less than $1,000.00 denominations. Out of the proceeds of said assessment, and to the extent only thereof, the said fiscal agent shall pay:

(a) The costs and expenses of validation proceedings to validate the Refunding Bonds.

(b) The costs of printing the Refunding Bonds.

(c) The fee of nationally recognized general market attorneys for their approving opinion upon the issuance and validation of the Refunding bonds.

(d) The costs, expenses and fees in the bankruptcy proceedings.

Note: The modified plan would not increase the annual tax levy as much as one-half a mill over that actually levied by the City last year under agreements made with certain of its bondholders who will be affected by this plan; and assuming that the City utilizes the funds appropriated and available for these same unexchanged securities under its presently proposed plan, there would be no increase in millage over that of last year. Moreover, under the modified plan, the City has the option of using funds, other than ad valorem taxes, for the servicing of the bonds issued under the modified plan, thereby cutting down ratably the amount of taxes to be levied for the refunding bonds issued hereunder.

On September 10, 1940 Motion to Require Amendment of Petition was filed in words and figures as follows, to-wit:

MOTION TO REQUIRE AMENDMENT OF PETITION.

128 (Title Omitted.)

Comes now The American National Bank of Nashville, Tennessee, and shows unto the Court that it is the holder and bearer of the interest coupons from bonds of the City of Coral Gables, Florida in the aggregate sum of $84,282.50; that it has filed a Motion to Dismiss and an Answer to the Petition for Composition heretofore filed herein.

It is the judgment of this objecting creditor that the Petition should contain further allegations relative to the status of the City, so that a clear picture might be presented to the Court of whether or not the City is en-

titled to the relief prayed for, without the necessity of taking testimony.

Wherefore, this Petitioner moves the Court that the City of Coral Gables be required to set forth in its Petition the Deposit Agreement, pursuant to which the ordinances set forth in paragraph 1 of the Petition were enacted.

It is this creditor's view that this agreement will show that the plan was a voluntary plan of adjustment, completely executed, thus taking the City of Coral Gables out of the operation of Section "J".

This creditor further moves that the City of Coral Gables be required to set forth in the Petition the price paid for the retirement of $475,198.98 of the Refunding Bonds and $234,746.92 of the Tax Participation Certificates which the City now owns, holds or controls, as set forth in the second section of paragraph numbered 3 and the years in which the said bonds were acquired, and that the City further be required to set up in its Petition the amounts levied pursuant to peremptory writs of mandamus and paid on the peremptory writs of mandamus during all the fiscal years since the issuance of the bonds of the issue of January 1, 1937.

WYLIE & WARREN,
By STUART B. WARREN,
BASS, BERRY & SIMS,
By F. A. BERRY,
Attorneys for The American National Bank of Nashville, Tennessee.

On October 9, 1940 Order was filed (recorded in Minute Book 21, p. 331) in words and figures as follows, to-wit:

(Caption Omitted.)

130 ORDER.

This cause coming on to be heard on the Motion of the creditor, Ed. C. Wright and Company, for an Order allowing it to file amendments to the Answers and Objections previously filed herein by it, and it appearing to the Court that the time fixed for the hearing hereon is set for October 19, 1940, and the Court being further advised in the premises

It Is Thereupon Ordered And Adjudged that the creditor, Ed. C. Wright and Company, be and it is hereby allowed to file amendments to the Answers and Objections it has previously filed herein at any time not less than ten days prior to October 19, 1940, to-wit at any time prior to and including October 9, 1940.

Done and ordered in Chambers at Miami, Florida, this the 9th day of October, A. D. 1940.

JOHN W. HOLLAND,
Judge of the U. S. District Court.

On October 9, 1940 Amendment to Answer and Objections of Ed C. Wright & Company was filed in words and figures as follows, to-wit:

AMENDMENT TO ANSWER AND OBJECTIONS OF ED. C. WRIGHT & COMPANY.

131 (Title Omitted.)

Comes now Ed. C. Wright & Company, a creditor of the City of Coral Gables, Florida, and files this its amendment to the answer and objections to the plan of composition it has heretofore filed herein, and adds the following paragraphs:

(18).

This creditor further alleges that the purported plan of composition, and the petition for composition filed herein, is not filed in good faith, and is not the result of a joint effort on the part of the City of Coral Gables, Florida, and those creditors whose signatures are appended to said petition as consenting creditors; that on or about the 24th day of December, A. D. 1936, the City of Coral Gables, Florida, entered into a voluntary agreement for the issuance of refunding bonds, issue of January 1, 1937, and Tax Participation Certificates, issue of January 1, 1937, for the City's then outstanding unrefunded debts with a certain Committee of the holders of bonds of the City of Coral Gables, Florida, known as the Coral Gables, Florida, Bondholders' Protective Committee, which said Committee was composed of E. H. Barker, Chairman, Prentiss de V. Ross, Sanders Shanks, Jr., and E. C. Lautenbech, Secretary, 100 Broadway, New York City; that at the time of the agreement aforesaid and

at the time of the actual exchanges of said bonds hereafter mentioned, the aforesaid Coral Gables, Florida, Bondholders' Protective Committee had on deposit and represented over 90% of the City's then outstanding unrefunded indebtedness; that pursuant to the agreements aforesaid and during the year 1937, Refunding bonds of the issue of January 1, 1937, and Tax Participation Certificates of the issue of January 1, 1937, were issued, validated and the exchange of more than 90% of said bonds was made with the Bondholders' Protective Committee aforesaid at a large bank and trust company in New York City, and this creditor alleges, on information and belief, that at a time prior to the actual exchange of the aforementioned bonds and securities, more than 90% of the creditors of the City of Coral Gables, Florida, through the Bondholders' Protective Committee aforesaid, refused and objected to a filing of any petition in the Bankruptcy Court of the United States for a composition of the indebtedness of said city, notwithstanding the fact that the said act was available to said City and to more than 90% of its then consenting creditors; that, thereupon, the aforesaid securities were exchanged, not in contemplation of bankruptcy, with the Committee above mentioned; that said Committee had been in active operation for several years, and that during this time more than 90% of the creditors of the City of Coral Gables, the same creditors who are now consenting to this plan of composition, received substantial payments from the said City from time to time to be applied to their securities, which said substantial payments were not made available to those creditors who did not choose to deposit their securities with the aforesaid Bondholders' Protective Committee; that after the exchanges of securities aforesaid, every bond which had consented to these proceedings was then available for sale on the open market; that said Bondholders' Protective Committee caused

to be published in financial journals and magazines having a national circulation, after the exchanges aforesaid, that the refunding of Coral Gables, Florida, was completed and that said Committee's work was completed, and that it had dissolved; that the consenting creditors to this plan of composition are not the same creditors who exchanged bonds with the City at the time of the original exchanges in the year 1937; that each and every of the consenting creditors to this plan of composition is a holder of Refunding bonds, issue of January 1, 1937, who purchased his securities on the open market and not in contemplation of any bankruptcy proceedings; that said consenting creditors are not the holders of securities outstanding as a result of a partial completion or execution of a plan of composition as defined in (11 U. S. C. A. 403 (j)); and this creditor further alleges that the majority of said consenting creditors have no knowledge whatsoever of the provisions of the agreement made in 1937 by the said City of Coral Gables with the Bondholders' Protective Committee, and have no knowledge whatsoever of the provisions of this plan of composition, and that this proceeding and every consent filed thereunder is not a proceeding pursuant to the joint efforts of the creditors of the City of Coral Gables and the City of Coral Gables, Florida for an adjustment of the City's outstanding indebtedness, but that said proceedings, and each and 'every consent filed thereunder, is the result of an absolute solicitation made by the City of Coral Gables to each consenting creditor holding Refunding bonds, issue of January 1,1937, wherein and whereby each consenting creditor was told that this Court could not and would not change his rights in any manner whatsoever; that the object of these proceedings was to force the unrefunded security holders to take the same securities that those bondholders who had exchanged their securities in 1937 had taken; that the Court could not make

any other determination; that the said City of Coral Gables sent to each of said consenting creditors a paper in printed form entitled "Proof of Claim and Consent"; that each of said creditors, by merely filing a proof of claim, thereby automatically consented to the said plan of composition; that it is impossible for this Court at this time—more than three years after the original exchange of securities—in considering this plan of composition, under which only the rights of those creditors holding unrefunded securities, to-wit, the holders of approximately 5% of the indebtedness of said City, will be adjusted or modified materially by the consummation of these proceedings, to place all creditors on the same legal and equitable footing, because

(1) The rights of those creditors who have consented to this plan do not extend back to the time of the purported partial completion or execution of the purported plan of composition, and thus the consenting creditors are not the holders of securities outstanding as the result of a partial completion or execution of a plan of composition, and

(2) At the time of the purported partial completion and execution of the purported plan of composition, every consenting creditor here was represented by the Bondholders' Protective Committee; that said Committee, this creditor is informed and believes, had advised the said City that it was not necessary to file proceedings in this Court; that the plan of composition herein makes no mention of said Committee, although it is a mandatory provision of the Municipal Bankruptcy Act (11 U. S. C. A. 403) that this Court must make specific adjudications of the acts and duties of said Committee.

(19).

That the City of Coral Gables, Florida, petitioner herein, and those creditors who have consented to the filing of this petition, and whose rights will not be adjusted in any manner whatsoever by the consummation of these proceedings, are now estopped from denying that the exchanges of bonds made by the City of Coral Gables in 1937 with these same consenting creditors were made under a voluntary agreement, and that such exchanges did not contemplate a proceeding in Bankruptcy Court; for that during the year 1936, the City of Coral Gables, Florida, entered into an agreement with more than 90% of the holders of its outstanding unrefunded indebtedness (the same holders who are now consenting to those proceedings), through the Coral Gables, Florida, Bondholders' Protective Committee, in and by which the said City of Coral Gables agreed to issue and deliver to said creditors, represented by the Committee aforesaid, refunding bonds, issue of January 1, 1937, and Tax Participation Certificates, issue of January 1, 1937, under terms similar to those set forth in these proceedings; that the said creditors voluntarily agreed to the proposals therein made and thereupon the said City, during the year 1937, validated and irrevocably exchanged bonds with more than 90% of its then outstanding creditors; that prior to and at the time of the exchanges aforesaid by the said City with the Bondholders' Protective Committee, the Municipal Bankruptcy Act (11 U. S. C. A. 401-403) was the law of the land and could have been used by said City and its consenting creditors; that, notwithstanding the availability of the said act to the said City and to over 90% of its then creditors, the said City and its creditors failed and refused to take advantage of this Act, and failed and refused to submit its agreements and contracts to this Court for a judicial determination at that time; and this creditor further alleges, on information and

belief, that these very same creditors who are now consenting to this plan of composition refused, through their representative, the Bondholders' Protective Committee, at a time when all parties would have been in the same legal position, to-wit in 1937 at the time of the actual exchange, to submit to the filing of a petition in the Bankruptcy Court to make the exchange 100% effective; that, under the contract made by the Committee with the said City of Coral Gables, Florida, its agreements were not contingent upon 100% completion, nor contingent upon a proceeding in a Bankruptcy Court; that, since the year 1937, to-wit for approximately three years, the said City of Coral Gables, Florida, and those consenting creditors, through the Bondholders' Protective Committee aforesaid, caused to be published and circulated in various national financial magazines and in reputable financial journals having a national circulation among dealers and purchasers of securities, that the refunding program of the City of Coral Gables had been consummated; that the consenting creditors to this petition, through the Committee aforesaid, caused to be published in various national financial magazines and in financial journals of national repute, long prior to any proceedings in this Court, that the said work of said Committee was through and completed, and that it had disbanded; that, notwithstanding the aforementioned representations, the said consenting creditors to this petition well knew that the refunding program had not been 100% completed, and that said City and said creditors waited for more than three years before instituting these proceedings to purportedly consummate a partial completion of a plan of more than three years ago, and that said creditors have impliedly represented to the public by their actions aforesaid that said exchanges made by the said City were not in contemplation of the bankruptcy, and that therefore those creditors are now estopped from asserting an inconsistent

position, to the detriment of the holders of unrefunded securities.

(20).

This creditor further says that the petition filed hereunder is not filed in good faith, because the same act was available to said City and to those consenting creditors at a time when a partial completion of the purported plan of composition took place, and that said debtor and the then consenting creditors failed and refused to take advantage of its provisions; that it would be unfair and inequitable for this Court to place its imprimatur to the purported plan of composition when it is impossible as a matter of law and as a matter of fact to place all parties before it now in status quo, and that said parties would have been in status quo more than three years ago, and at a time when said act was available to the City and its then consenting creditors but said City of Coral Gables, and its creditors chose not to avail themselves of the Bankruptcy Act; that the effect of the present proceedings legally is that, regardless of what this Court determines:

(1) whether it determines that the plan is unfair and inequitable and should be dismissed;

(2) whether it determines that the City of Coral Gables can pay more than it desires to pay, and therefore the plan is not for the best interests of those creditors whose rights are being adjusted or modified under these proceedings, and should be amended or dismissed; or

(3) whether the plan does or does not comply with the Municipal Bankruptcy Act, those creditors who have

consented to said plan will not have their rights adjusted or modified in any manner whatsoever;

whereas, had those consenting creditors filed a petition before this Court when they were in the same position as those creditors whose rights are to be adjusted under these proceedings, regardless of what the Court ruled, all creditors would be in the same legal position.

Wherefore, this creditor claims

(1) That the petition filed hereunder is not filed in good faith,

(2) That the petition filed herein is not the result of the joint efforts of the City and those creditors whose rights are to be adjusted under it to cause these composition proceedings to be had,

(3) That those creditors, who have consented to this petition, are now estopped from taking a position inconsistent with that of 1937; that the proceedings here fail to conform with the mandatory provisions of the Municipal Bankruptcy Act; that, therefore, these proceedings should

(1) be dismissed; or,

(2) be modified in conformity with the modified plan herein presented.

Respectfully submitted,
JOSEPH P. LEA, JR.,
Attorney for Creditor.

Joseph P. Lea, Jr.,
705 Florida Natl. Bank Bldg.,
St. Petersburg, Fla.

On October 9, 1940 motion was filed by Ed C. Wright & Company in words and figures as follows, to-wit:

144 MOTION.

(Title Omitted.)

Comes now Ed. C. Wright and Company, a creditor of the City of Coral Gables, Florida, and respectfully shows unto the Court that it is the holder of securities which are to be adjusted or modified by the consummation of the purported plan of composition submitted herein by the City of Coral Gables, Florida; that this creditor alleges on information and belief and is ready to so show unto the Court that the City of Coral Gables, Florida, without compulsion whatsoever from any of its creditors and without any joint effort on the part of any of its bondholders and the city, solicited the holders of Refunding Bonds, Issue of January 1, 1937, and the holders of Tax Participation Certificates, Issue of January 1, 1937, all of whom are not the same holders of bonds with whom the City of Coral Gables made exchanges in 1937, but are the holders of securities they purchased on the open market, asking them to file a proof of claim and consent to the purported plan of composition under which, it was alleged, the unrefunded security holders would be forced to take the same securities as the refunded bondholders and that the rights of said consenting creditors would not be changed in any manner whatsoever; that this Court could not change the rights of any of said consenting creditors; and that said City sent to each of said creditors a printed form combining both a proof of claim and a consent to the plan of composition, thereby causing each creditor to automatically consent to a plan of composition, by the filing of its proof of claim; that each and every of said consenting creditors has no knowl-

edge whatsoever of the contents of said plan of composition to which it is consenting; that the only reason that said consenting creditors consented to the filing of this petition in bankruptcy was on the solicitation of the said City of Coral Gables, and not by any joint effort on the part of creditors and the City of Coral Gables, and that each of said consenting creditors is submitting nothing to the determination of this Court; that the securities so listed herein as consenting to this plan of composition are negotiable securities and salable on the open market, and capable of free exchange, and have been on the open market for more than three years; that under the provisions of the Municipal Bankruptcy Act (11 U. S. C. A. 401-403), it is required that before this Court can confirm any plan of composition, it must find that the said plan conforms with the mandatory provisions of the Municipal Bankruptcy Act, and moreover provision is made in said Municipal Bankruptcy Act (contrary to the statements made by the debtor to the creditors they solicited as consentors to this petition) that this Court may allow costs and expenses incurred in these proceedings, including attorney's fees for creditors as well as the debtor, and may apportion such costs and charges among the parties to the proceedings as may be just (11 U. S. C. A. 403 (b)); that because the securities owned by the purported consenting creditors are negotiable securities and are all current and are capable of transfer from person to person, and the fact that the majority of unrefunded securities are past due and that, therefore, a purchaser thereof would take the same with knowledge of any of the equities appended thereto, it would be inequitable and unjust to allow any creditor of the City of Coral Gables to participate in these proceedings without first depositing his securities with the Court, or with some person designated by the Court, and there await the final determination of this matter.

That such procedure is in conformity with the ruling of another Judge of this District, the Hon. Alexander Akerman, in the case of Penn. Florida Hotels Corp., v. Atlantic National Bank, 84 F. (2d) 15, 16, 31 Am. Br. (N. S.) 1, 3 (C. C. A. 5th, 1936) in requiring, in a proceeding under 77B, the original securities to be placed before the Court.

Wherefore, motion is respectfully made that this Court enter an order making it a condition precedent to any of the securities participating in these proceedings, that the original of said securities on which said proofs of claim have been filed be deposited with the Court, or some person designated by the Court, and that such securities be held by the Court, or some person designated by the Court, pending the final determination of this matter; and that, where securities are represented by judgments, a certified copy of said judgment, together with a proof of claim listing the bonds and coupons so reduced to judgment, be filed in place and stead of the original bonds and coupons merged in said judgment.

Respectfully submitted,
JOSEPH P. LEA, JR.,
Attorney for Ed. C. Wright & Co.

Joseph P. Lea, Jr.,
705 Florida Natl. Bank Bldg.,
St. Petersburg, Fla.

On October 9, 1940 Ed. C. Wright & Company filed objections to claims in words and figures as follows, to-wit:

149 OBJECTIONS TO CLAIMS.

(Title Omitted.)

Comes now Ed. C. Wright & Company, a creditor of the City of Coral Gables, Florida, petitioning debtor herein, and objects to the allowance of the claims of any of those creditors of the City of Coral Gables, Florida, who have filed claims on refunding bonds of the issue of January 1, 1937, or on Tax Participation Certificates of the issue of January 1, 1937, and says:

(1) That each and every of said consenting creditors, it alleges on information and belief, is not now the owner of said securities on which said consent has been filed;

(2) That those creditors of the City of Coral Gables, Florida, who have filed claims on refunding bonds of the issue of January 1, 1937, and on Tax Participation Certificates of the issue of January 1, 1937, are not the holders of securities outstanding as the result of a partial completion or execution of any plan of composition of the City of Coral Gables, Florida, but are the holders of securities which they purchased on the open market long after the original exchanges were made in 1937, and not in anticipation of any Bankruptcy Proceeding whatsoever as designated under (11 U. S. C. A. 403 (j), for that

(a) During the year 1937, at a time when the Municipal Bankruptcy Act was available to the City of Coral Gables, Florida, and to any and all of the consenting creditors who desired to use it, the City of Coral Gables entered into a voluntary agreement with a certain Bond-

holders' Committee known as the Coral Gables Bondholders' Protective Committee, 100 Broadway, New York City, said committee being composed of E. H. Barker, Chairman, Prentiss deV. Ross, Sanders Shanks, Jr., and E. C. Lautenbech, Secretary, 100 Broadway, New York City; that said Committee was deemed a single creditor as to all of the bonds then deposited with it; that said Committee represented over 90% of the outstanding unrefunded indebtedness of the City of Coral Gables; that each of said bondholders so depositing their securities with said Committee, this creditor alleges on information and belief, through the said Committee, refused to submit the present plan of composition, at a time prior to the issuance of any refunding bonds, to this Court for its consideration under a proceeding in bankruptcy; and that the consenting creditors are not the same creditors who exchanged their securities in 1937 under the direction of the Committee aforesaid;

(b) That each and every consent filed hereunder by the holders of refunding bonds, issue of January 1, 1937, and Tax Participation Certificates, issue of January 1, 1937, is not a consent filed pursuant to a joint effort on the part of the debtor and more than two-thirds of its creditors to submit themselves and their securities to this Court for a judicial determination of whether or not the securities they have taken and have received benefits from for more than three years is fair and equitable; but this creditor, alleges on information and belief, that each and every of said consents is and was a consent procured solely by the debtor, the City of Coral Gables, Florida, from its creditors, the predecessor in title, each of whom had already composed the indebtedness listed, and each of whom was promised by the City of Coral Gables that its securities would not and could not be changed by this Court;

(c) That mandatory provision is made under the Bankruptcy Act (11 U. S. C. A. 403) where a Committee represents creditors, that such Committee must, before its claim is filed, file a list of the creditors represented by such Committee, giving the name and address of each creditor, together with a statement of the amount, class and character of the security held by him, and attach thereto copies of the instrument or instruments in writing signed by owner of the bonds, showing their authority, and shall file with the list a copy of the contract or agreement into between such Committee, organization, group, or individual and the creditors represented by it or them, which contract shall disclose all compensation to be received, directly or indirectly, by such Committee, organization, group, or individual, which agreed compensation shall be subject to modification and approval by the Court; that no such instruments have been filed with this Court, nor has the Coral Gables, Florida, Bondholders' Protective Committee filed with this Court any proof of claim whatsoever; that, therefore, to allow the claim of those holders of refunding bonds, Issue of January 1, 1937, and Tax Participation Certificates, Issue of January 1, 1937, without submitting to this Court for its determination the requirements mandatorily provided for in said Municipal Bankruptcy Act, violates the provisions of said Bankruptcy Act and is grounds for disallowance of such claims;

(d) That those consenting creditors who have consented to this petition are now estopped from asserting that the exchanges made in 1937 were anything other than a voluntary agreement and not in contemplation of the Bankruptcy Act, for that the same creditors who are now consenting to this petition, this creditor alleges on information and belief, failed and refused to consent to the filing of a petition in bankruptcy in 1937 when all parties were on a parity, but that they received their se-

curities under a voluntary agreement with said City and that, during the ensuing three years, these same creditors caused and allowed to be published and circulated in financial magazines and in financial journals, having national circulation, that the refunding program of the City of Coral Gables, Florida, had been consummated; that the Committee representing these same creditors had finished its work and that it was no longer necessary for the Committee to operate; and that at the time of these representations, these creditors, well knew or should have known, that the refunding program was not 100% complete; and that it would be unfair, inequitable and unjust for this Court to take cognizance of these proceedings at a time when it is impossible for all of the parties to appear before it on a parity; that all parties could have appeared before it on a parity, but that those forcing creditors failed and refused to so submit themselves to this Court at that time and have made representations inconsistent with their position now before the Court; that the Committee, representing said creditors, is not now before this Court, although said committee was deemed a creditor at the time of the purported completion or execution of the plan of composition.

Wherefore, objection is made to the allowance of the claim of any of those creditors holding securities designated as Refunding Bonds, Issue of January 1, 1937, whether they be of the First Series or of the Second Series, and those creditors holding Tax Participation Certificates, Issue of January 1, 1937.

Respectfully submitted,
JOSEPH P. LEA, JR.,
Attorney for Creditor.

Joseph P. Lea, Jr.,
705 Florida Natl. Bank Bldg.,
St. Petersburg, Fla.

On October 12, 1940 Petitioner filed Response to Motion or Petition of Ed. C. Wright & Company for Order Approving Modification of Plan of Composition as Submitted by the City of Coral Gables, Florida, in words and figures as follows, to-wit:

RESPONSE TO MOTION OR PETITION OF ED C. WRIGHT & COMPANY FOR AN ORDER APPROVING A MODIFICATION OF THE PLAN OF COMPOSITION AS SUBMITTED BY THE CITY OF CORAL GABLES.

156 (Title Omitted.)

Now comes the City of Coral Gables, Florida, the bankrupt named in the above stated case, and, in response to said motion or petition for modification filed by Ed C. Wright & Company, respectfully shows:

1.

In response to paragraph one, the City of Coral Gables admits that, prior to the filing of its petition in this case, it actually exchanged the refunding bonds mentioned in the petition with approximately 94% of its creditors in an effort to work out some plan by which the City of Coral Gables could make progress and pay to its creditors a just and fair proportion of its debts. The City received the cooperation of more than 94% of its creditors but the remaining less than 6% refused to cooperate and now seek to take advantage of the progress made by the City of Coral Gables and the improvement of its financial situation as a direct result of its partial adjustment of its debts with its creditors. The said Ed C. Wright & Company is not

one of the original bondholders but is a bond brokerage concern.

As a result of the depression which began about 1930, the City of Coral Gables was unable to meet its obligations and, for that reason, its bonds depreciated in value. During this depression, the said Ed C. Wright & Company began purchasing bonds from distressed bondholders at a few cents on the dollar, and refused to cooperate with the city in trying to solve its financial difficulties.

After the City of Coral Gables had worked out a plan of refunding its bonds, as of January 1, 1937, the said Ed C. Wright & Company refused to cooperate but continued to purchase distressed bonds at a few cents on the dollar wherever it could find them, and has continued to purchase said bonds at various prices during the past three years while said city has been trying to work out the refinancing and refunding of its bond issues with its creditors. Instead of Ed C. Wright & Company showing any spirit of cooperation, said company has tried to thwart the refunding of the bond issue, has tried to embarrass the operations of the city under its refinancing plan and has tried to cause the city to default in its servicing of the refunding bonds issued, and is endeavoring to collect its bonds, purchased at low prices as above set forth, at par value plus interest. The City of Coral Gables requests this Court to require the said Ed C. Wright & Company to disclose in this Court of Equity what it paid for these various bonds and from whom they were purchased, in order that the Court may be fully apprized as to the merits of the plan of modification which said company has submitted in this case.

2.

In answer to paragraph two of said motion, the City of Coral Gables respectfully shows that the plan of modification submitted by the said Ed C. Wright & Company is not just or fair, as it does not take into consideration the rights of any creditors except itself and a small percentage of other creditors who have likewise been trying to force the City of Coral Gables to pay in full their indebtedness although more than 94% of the other bondholders are willing to settle according to the plan submitted to this Court. The modified plan submitted by the said Ed C. Wright & Company is a further evidence of the tactics of that company in its endeavors to force collection of its bonds in full while the other creditors refund theirs on the adjusted basis set forth in the plan attached to the petition in this case. The plan submitted by the said Ed C. Wright & Company is merely an effort to confuse the issues and get the Court to award it full payment, except for a slight modification of interest, of its securities purchased at distressed prices, as aforesaid, while more than 94% of the creditors cooperate with the city in settling its financial difficulties.

The City of Coral Gables respectfully shows that, in its endeavor in the bankruptcy petition to work out an equitable settlement with its creditors so the city may not be hampered in its development, upon which the payment of its obligations depends, it has submitted to this Court a fair and just plan, but the substitute plan submitted by the said Ed C. Wright & Company is not just or fair as it takes no consideration of the more than 94% of the creditors who are willing to refund their bonds on the basis set forth in the petition, but takes into consideration only itself and the other few remaining bondholders who have, for their own selfish interests, endeav-

ored to thwart the refinancing of the indebtedness of the City of Coral Gables. The modified plan submitted by the said Ed C. Wright & Company shows that it takes into consideration no one except itself and the few dissenting bondholders, thereby endeavoring to collect their bonds in full while the other bondholders accept a settlement.

3.

The City of Coral Gables denies the allegations contained in paragraph three of said motion of Ed C. Wright & Company, and alleges that, if any settlement was made in the Sarasota case mentioned, it was a compromise settlement and was not made after an adversary hearing, but was a compromise engineered by the dissenting bondholders for their own benefit rather than for the benefit of the City of Sarasota and other bondholders. If such judgment was entered in the Sarasota case, it is in direct conflict with the decision of the Circuit Court of Appeals in the City of Homestead and City of Sanford cases.

4.

In response to paragraph four of said motion or petition of said Ed C. Wright & Company, the City of Coral Gables denies the allegations therein and says that, if any such plan in the Sarasota case mentioned was approved, it was approved as a result of a compromise and not after an adversary hearing on the issues submitted.

5.

In response to paragraph five, the allegations contained therein are denied.

6.

In response to the allegations contained in paragraph six, the City of Coral Gables denies that the debt service millage in the City of Sarasota is 17½ mills and alleges that it is only 12.3 mills and that the assessed valuation in Sarasota is only 70% of full value, whereas the assessed valuation in Coral Gables is 100%. The allegations with reference to the debt service millage of the City of Coral Gables being only approximately 8 mills is not illustrative at all of the conditions existing in the two cities. For illustration, the plan submitted to this Court by the City of Coral Gables provides that the property in the City of Coral Gables shall be assessed at its full *cash* value. The result is that the City of Coral Gables' taxes are now exceedingly high, averaging much higher than other cities in Florida. For instance, the millage for state and county taxes in Dade County, Florida (in which the City of Coral Gables is located) is 69 3/8 mills, but the valuation of the property in Coral Gables by the state and county tax assessor is much less than the valuation placed on the same property by the City of Coral Gables. As a result, the City of Coral Gables' taxes amount in cash to approximately several times as much as the state and county taxes on the same property. As a typical illustration of this, the State and county taxes for the year 1939 on the house and lots at 1260 South Greenway Drive in Coral Gables were $51.46, whereas the City of Coral Gables taxes were the sum of $274.14. This is illustrative of the tax situation throughout the City of Coral Gables, and taxes cannot be raised without being too oppressive upon the property values of the city and retarding its future growth.

7.

The City of Coral Gables denies the allegations contained in paragraph seven that the plan submitted by it

does not take into consideration the ability of the city to pay, and alleges that the plan submitted by it is just and equitable, as evidenced by the fact that more than 94% of its bondholders have previously agreed to the plan. Respondent denies that the modified plan submitted by the said Ed C. Wright & Company is well within the ability of the city to pay.

8.

Respondent denies the allegations contained in paragraph eight, and denies that the Sarasota case mentioned creates a precisely similar situation, and alleges that, in the event the approval of such plan was obtained from the Federal Court, it was due to the harrassing tactics of the said Ed C. Wright & Company against the citizens of the City of Sarasota resulting in a compromise, and not from an adversary hearing on the issues involved before the Federal Court. Such compromise settlement was directly in conflict with the decision of the Circuit Court of Appeals for the Fifth Circuit, as above set forth in paragraph three of this response.

9.

Respondent denies the allegations contained in paragraph nine, and alleges that the plan submitted by it is fair and just to all creditors and that, even though the holders of interest items may be given different treatment under the plan submitted by the City of Coral Gables from that of the holders of bonds, such plan is fair, just, and equitable to all parties concerned.

As to interest items, the City of Coral Gables respectfully shows that the said Ed C. Wright & Company, working in connection with the American National Bank of Nashville, Tennessee, and with J. Howard Gould of

St. Petersburg, Florida; H. A. Thompson of Nashville, Tennessee, and James K. Wiley of Nashville, Tennessee, who have also appeared and filed pleadings in this case, claims to have obtained a large number of interest coupons which have been clipped from old bonds issued by the City of Coral Gables. Said American National Bank of Nashville, on December 20, 1939, filed mandamus proceedings in the Circuit Court of Dade County, Florida, claiming to be the holder and bearer of coupons in the aggregate amount of $95,825.00, and seeking by mandamus proceedings the payment of said coupons. The Circuit Court of Dade County denied said mandamus petition and dismissed the same on the 18th day of June, 1940, and now the said J. Howard Gould, H. A. Thompson, and James K. Wiley appear in this Court claiming to be the holders of a large number of said clipped interest coupons. The City of Coral Gables denies that said alleged coupons are its indebtedness, and alleges that the said American National Bank of Nashville and the said J. Howard Gould, H. A. Thompson, and James K. Wiley, are cooperating in an effort to collect an indebtedness from the City of Coral Gables by mandamus proceedings or by the proposed modified plan of the said Ed C. Wright & Company, which the city does not owe; that they are all working with the said Ed C. Wright & Company in an endeavor to force the full payment of bonds purchased at depressed prices, as above set forth, and that the modified plan proposed by the said Ed C. Wright is designed for their benefit and not for the benefit of the City of Coral Gables or any of its other creditors.

10.

Respondent denies the allegations contained in paragraph ten, and alleges that, if any modified plan was presented by the creditors of the City of Sarasota as

alleged, and if the same was adopted by the Court, it was the result of a compromise and not the result of an adversary hearing, as hereinabove set forth, and that any such compromise as in the City of Sarasota case is not binding on this Court and is wholly irrelevant and immaterial. Furthermore, it is contrary to the holding of the Circuit Court of Appeals, as shown above in paragraph three of this response.

11.

In answer to paragraph eleven, the City of Coral Gables admits that it is contributing $25,000.00 to the University of Miami, Inc., a non-profit organization and one of the leading educational institutions in this state; that such contribution is made under charter authority; that such contribution is to the advantage of all the creditors of the City of Coral Gables because the University of Miami has more than twelve hundred students in attendance, resulting in many families moving to Coral Gables and thereby increasing the population of the city; that said University makes the City of Coral Gables a much more desirable community for residential and business purposes, and thereby improves values. Said contribution thus aids in making it possible for the City of Coral Gables to meet its obligations under the refunding plan submitted.

12.

Further responding, the City of Coral Gables alleges that, before the motion of the said Ed C. Wright & Company for modification can be given consideration by the Court, it is necessary for this Court to determine that the non-assenting bondholders are a separate class from holders of refunding bonds. The plan proposed by the City of Coral Gables contemplates the same fair and

equitable treatment to all the holders, whereas the plan proposed by the said Ed C. Wright & Company is submitted in behalf of only a few of the holders. If said non-assenting creditors are not affected by the plan, then their proposed modification is contrary to the provisions of the statute, as there would be no plan to be modified, so far as they are concerned. The City of Coral Gables further shows that the proposed plan of the said Ed C. Wright & Company unfairly discriminates against the bondholders who have cooperated and who have been sympathetic with the city in its financial difficulties and in favor of the creditors who have constantly impeded the city's efforts and refused to cooperate in the adjustment of the city's finances.

13.

Further responding, the City of Coral Gables respectfully shows that the proposed modified plan of the said Ed C. Wright & Company is not a composition or compromise in any sense, as it requires new bonds to be issued for the full amount of the principal and interest prior to and after the maturity of the bonds held by the said Ed C. Wright & Company and the other dissenting bondholders.

The modified plan seeks to take advantage of the increased ability of the city to pay, which has been brought about by the forbearance and cooperation of the assenting bondholders. The proposed plan of the said Ed C. Wright & Company seeks to reward the speculator who has purchased bonds and coupons at reduced prices and who has attempted to thwart the development of the City of Coral Gables in every way possible in an effort to collect the full amount of the indebtedness thus purchased.

Wherefore, the City of Coral Gables prays that said modified plan be denied.

MORTON B. ADAMS,
IRA C. HAYCOCK,
REDFEARN & FERRELL,
By D. H. REDFEARN,
Attorneys for City of Coral Gables.

On October 19, 1940 Petitioner filed motion to strike separate objections to claims filed by Ed C. Wright & Company, in words and figures as follows, to-wit:

166 MOTION TO STRIKE.

(Title Omitted.)

Now comes the City of Coral Gables, Florida, and moves to strike the separate objections to claims filed in this case by Ed C. Wright & Company, on the following grounds:

1.

The issues sought to be raised by said objections to claims are alleged issues between the said Ed C. Wright & Company and each individual creditor, and said objections cannot be raised in such general form.

2.

Said objections are irrelevant and immaterial, and raise no issues which have not been previously decided adversely thereto by the Federal Court.

3.

Said objections seek to raise issues of fact which can be raised only in an answer.

4.

Said objections seek to establish separate classes of creditors of the City of Coral Gables, Florida, whereas there is only one class of creditors.

Wherefore, the City of Coral Gables, Florida, prays that this motion be sustained and that said objections be stricken.

MORTON B. ADAMS,
(Morton B. Adams)
City Attorney,
IRA C. HAYCOCK,
(Ira C. Haycock)
REDFEARN & FERRELL,
By D. H. REDFEARN,
Attorneys for the City of Coral Gables, Florida.

On October 19, 1940 order appointing F. M. Hudson as Special Master was filed in words and figures as follows, to-wit:

168 ORDER.

(Title Omitted.)

The above styled cause coming on this day for hearing and the undersigned Judge having suggested that he is

a resident of the City of Coral Gables, Florida, and for that reason desired to know if any of the parties or their counsel desired for him to recuse himself, and all parties being represented by counsel and present at the hearing, and all having agreed that so far as this order is concerned he need not recuse himself, and that all would be estopped to raise the question of his disqualification so far as the entry of this order is concened, and all counsel present having agreed that it would expedite the hearing of this case if all matters, including all questions of law and fact were now referred to a Master, and all parties consenting to the reference of this case to the Honorable F. M. Hudson, Miami, Florida, as Special Master, and the Court being fully advised in the premises,

It Is Ordered, Adjudged And Decreed that F. M. Hudson be, and he is, hereby appointed as Special Master to hear all issues of law and fact in this case, and to report his findings of law and fact to this Court with all due speed and expedition, in due course. Said Master is authorized to make his findings of law and fact and report the same to the Court in one report or in separate reports, as the parties may desire or agree upon, or as he may be advised.

Done And Ordered in Chambers, at Miami, Florida, this 19th day of October, A. D. 1940.

(S.) JOHN W. HOLLAND,
District Judge.

On January 17, 1941 Objections to Claims were filed in words and figures as follows, to-wit:

169 OBJECTIONS TO CLAIMS.

(Title Omitted.)

Comes now American National Bank of Nashville, Tennessee, Ed. C. Wright & Company, and J. Howard Gould, creditors, and object to the allowance of claim of each and every of those creditors whose claims are attached to this objection, and move the Court to disallow and expunge each and every of them from participation in this case, for that, as to each proof of claim:

(a) The said claimant has failed to comply with the mandatory provisions of the Bankruptcy Act, Section 57 (a) and (b), has failed to comply with General Order No. 21 in bankruptcy and with the mandatory provisions of the Municipal Bankruptcy Act (11 U. S. C. A. 403 (e)), in that said claimant did not file the original of said securities with the proof of claim as required aforesaid;

(b) The claimant, or his predecessors in interest has been given preferential treatment in violation of 57 (g) of the Bankruptcy Act, in that substantial payments of interest (and interest coupons) were paid upon said securities, in excess of the amount paid to other claimants whose securities were on a parity, voidable under the provisions of said Act, and said preference by the present holder has not been surrendered to this Court. The amount of said preference is not known to the objector and can be ascertained only by production of the records of the said City of Coral Gables and testimony introduced in reference thereto.

(c) The proof of claim shows that it was not filed within the time allowed by the mandatory provisions of the Municipal Bankruptcy Act (11 U. S. C. A. 403 (b) nor within the time allowed by the Court in its order entered on the 27th day of June, A. D. 1940; that said claim was filed on December 12, 1940, long after the expiration of the time for filing proofs of claims in these proceedings.

AMERICAN NATIONAL BANK OF NASHVILLE, TENNESSEE,
ED. C. WRIGHT & CO.,
J. HOWARD GOULD,
By BASS, BERRY & SIMMS,
American Trust Building,
Nashville, Tennessee.

WYLIE AND WARREN,
Hall Building,
St. Petersburg, Florida.

JOSEPH P. LEA, JR.,
705 Florida National Bank Bldg.,
St. Petersburg, Florida.

(S.) By JOSEPH P. LEA, Jr.,
Attorneys for said Objecting Creditors.

171 EXHIBIT 1.

Barcus, Kindred & Co., 231 So. La Salle St., Chicago, Ill.

Joseph W. Broisus, New Castle, Del.

Malcolm A. Broisus, New Castle, Del.

Peter Barr, 418 W. Spruce St., Shamokin, Pa.

William H. Boshart, 5141 Pine Tree Drive, Miami Beach, Florida.

Emma K. Boshart, 5141 Pine Tree Drive, Miami, Beach, Florida.

Hiram Bingham, Old Lyme, Conn.

Mrs. Bessie C. Cole, 2701 West Scarborough Road, Cleveland, Ohio.

Czech Ladies Benevolent Society, Att: Mrs. Ruzicka, Pres., Cleveland, Ohio.

Jessie W. Crawford, Sterling, Ill.

C. S. Elliott, Topeka, Kansas.

K. R. Ewald, Centerville, Miss.

William B. Frey, Toledo, Ohio.

First National Bank, Bradenton, Fla.

Garland Grey, Waverley, Va.

Bernadine Grondahl, Dorset, Vt.

Mary Elizabeth Harrison, Sterling, Ill.

Miss Ellen Hepkins, Miami, Fla.

Walter A. Holloway, Chicago, Ill.

E. G. Holloway, Chicago, Ill.

Philip S. Issacs, c/o Brenner Bros., 130 W. 31st St., New York, N. Y.

Thos. McE. Johnston, Miami, Florida.

Dewey Knight, Miami, Fla.

Douglas H. Lawrence, Denver, Colorado.

Susan F. Mills, Boston, Mass.

Frank B. McQuesten, 27 Kilby St., Boston, Mass.

Joseph W. McCarthy, Chicago, Ill.

John C. Myers, Ashland, Ohio.

J. Lester Parsons, New York, N. Y.

Frank C. Pahlaw, 1224 Bunker Hill Rd., Ashtabula, Ohio.

Edward I. Peck, 3363 Warrensville, Center Road, Cleveland, Ohio.

Henry Reinwald, Middletown, N. Y.

Henry W. Schurman, 420-Madison Ave., New York, N. Y.

Nellie B. Snavely, 2140 Stillman Road, Cleveland Heights, Ohio.

Harriet Van Antwerp, 250 N. E. 26th St., Miami, Fla.

Dr. V. Thomsen Van Colditz, Cocoa, Fla.

Supreme Lodge of Sons of Norway, 3603 14th Ave. South, Att: K. R. Andersen, Secy., Minneapolis, Minn.

Lucius Wilmerding, New York, N. Y.

David C. Wright, 2700 East 29th Street, Cleveland, Ohio.

174 EXHIBIT 2.

Notice of Objections to Claims.

(Title Omitted.)

To:

You will please take notice that the undersigned creditors of the City of Coral Gables, Florida, object to the proof of claim of the above stated creditor, and will move the Court to disallow and expunge the same from this case, for that

(a) The said claimant has failed to comply with the mandatory provisions of the Bankruptcy Act, Section 57 (a) and (b), has failed to comply with General Order No. 21 in bankruptcy and with the mandatory provisions of the Municipal Bankruptcy Act (11 U. S. C. A. 403 (e), in that said claimant did not file the original of said securities with the proof of claim as required aforesaid;

(b) The claimant, or his predecessors in interest, has been given preferential treatment in violation of 57 (g) of the Bankruptcy Act, in that substantial payments of interest (and interest coupons) were paid upon said securities, in excess of the amount paid to other claimants whose securities were on a parity, voidable under the provisions of said Act, and said preference by the present hol-

der has not been surrendered to this Court. The amount of said preference is not known to the objector and can be ascertained only by production of the records of the said City of Coral Gables and testimony introduced in reference thereto.

(c) The proof of claim shows that it was not filed within the time allowed by the mandatory provisions of the Municipal Bankruptcy Act (11 U. S. C. A. 403 (b) nor within the time allowed by the court in its order entered on the 27th day of June, A. D. 1940; that said claim was filed on December 12, 1940, long after the expiration of the time for filing proofs of claims in these proceedings.

AMERICAN NATIONAL BANK OF NASHVILLE, TENNESSEE,
ED. C. WRIGHT & CO.,
J. HOWARD GOULD,
By BASS, BERRY & SIMS,
American Trust Building,
Nashville, Tennessee.
WYLIE AND WARREN,
Hall Building,
St. Petersburg, Florida.
JOSEPH P. LEA, JR.,
705 Florida National Bank Bldg.,
St. Petersburg, Florida.
(S.) By JOSEPH P. LEA, JR.,
Attorneys for said Objecting Creditors.

176 AFFIDAVIT.

State of Florida,
County of Pinellas, ss.

Personally appeared before me, a notary public in and for the County and State aforesaid, Joseph P. Lea, Jr., to me well known and who by me being duly sworn, deposes and says that he is counsel for one of the objecting creditors above named, and, as such, he has authority to make this affidavit; that on the 14th day of January, A. D. 1941 he notified each and every of said creditors listed herewith under Exhibit 1 whose claim has been objected to, sending each of said creditors a copy of the notice hereto attached and marked Exhibit 2, and mailing said notice to the last known address of said creditor as disclosed in these proceedings.

JOSEPH P. LEA, JR.

Subscribed and sworn to before me this 16th day of January, A. D. 1941.

ALVAH C. BELCHER,
(N. P. Seal) Notary Public.

My commission expires: August 19, 1942.

On January 17, 1941 Objections to Claims were filed by American National Bank et al in words and figures as follows, to-wit:

177 (Caption Omitted.)

Comes now American National Bank of Nashville, Tennessee, Ed. C. Wright & Company, and J. Howard Gould, creditors, and object to the allowance of claim of each

and every of those creditors whose claims are attached to this objection, and move the Court to disallow and expunge each and every of them from participation in this case, for that, as to each proof of claim:

(a) The said claimant has failed to comply with the mandatory provisions of the Bankruptcy Act, Section 57 (a) and (b), has failed to comply with General Order No. 21 in Bankruptcy with the mandatory provisions of the Municipal Bankruptcy Act (11 U. S. C. A 403 (E)), in that said claimant did not file the original of said securities with the proof of claim as required aforesaid;

(b) The claimant, or his predecessor in interest, has been given preferential treatment in violation of 57 (G) of the Bankruptcy Act, in that substantial payments of interest (and interest coupons) were paid upon said securities, in excess of the amount paid to other claimants whose securities were on a parity, voidable under the provisions of said act, and said preference by the present holder has not been surrendered to this Court. The amount of said preference is not known to the objector and can be ascertained only by production of the records of the said City of Coral Gables and testimony introduced in reference thereto.

(c) The claimant listed herein has failed to comply with the mandatory provisions of the Municipal Bankruptcy Act (11 U. S. C. A. 403 (A)) in that said claimant has not attached to the proof of claim copies of the instrument or instruments in writing showing the authority of the said claimant to act in its representative capacity, as required by the act.

(d) The proof of claim shows that it was not filed within the time allowed by the mandatory provisions of

the Municipal Bankruptcy Act (11 U. S. C. A. 403 (B)) nor within the time allowed by the Court in its order entered on the 27th day of June, A. D. 1940; that said claim was filed on December 12, 1940, long after the expiration of the time for filing proofs of claims in these proceedings.

AMERICAN NATIONAL BANK OF NASHVILLE, TENNESSEE,
ED. C. WRIGHT & CO.,
J. HOWARD GOULD,
By BASS, BERRY & SIMS,
American Trust Building,
Nashville, Tennessee.

WYLIE AND WARREN,
Hall Building,
St. Petersburg, Florida.

JOSEPH P. LEA, JR.,
705 Florida National Bank Bldg.,
St. Petersburg, Florida.

(S.) By JOSEPH P. LEA, JR.,
(Joseph P. Lea, Jr.)
Attorneys for said Objecting Creditors.

179 EXHIBIT I.

Elizabeth P. Gordon, Exec., Estate of Alexander Gordon, Cumberland, Maine.

John A. McCreery, 115 E. 61st St., (Agent for Christine Houget), New York, N. Y.

Richard H. Conklin, Guardian, Barbara Jane Mangus, Los Angeles, Calif.

John E. Page and John Abbott, Trustees of Robert P. Gay, Winchester, Mass.

H. A. Grey, Jr., Exec., Estate of H. A. Grey, Waverly, Va.

180 EXHIBIT II.

(Note: This Exhibit II is Notice of Objections to Claim and is the same as Notice of Objections to Claim appearing as Exhibit II to the preceding instrument.)

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181 AFFIDAVIT.

State of Florida,
County of Pinellas, ss.

Personally appeared before me, a Notary Public in and for the County and State aforesaid, Joseph P. Lea, Jr., to me well known and who by me being duly sworn, deposes and says that he is counsel for one of the objecting creditors above named, and, as such, he has authority to make this affidavit; that on the 14th day of January, A. D. 1941 he notified each and every of said creditors listed herewith under Exhibit I whose claim has been objected to, sending each of said creditors a copy of the notice hereto attached and marked Exhibit 2, and mailing said notice to the last known address of said creditor as disclosed in these proceedings.

JOSEPH P. LEA, JR.
(Joseph P. Lea, Jr.)

Subscribed and sworn to before me this 16th day of January, A. D. 1941.

ALVAH C. BELCHER,
(N. S.) Notary Public.

My commission expires .....

Notary Public, State of Florida at Large, My commission Expires August 19, 1942.

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182 On January 20, 1941 Objections to Claims were filed in words and figures as follows, to-wit:

OBJECTIONS TO CLAIMS.

(Title Omitted.)

Comes now American National Bank of Nashville, Tennessee, Ed. C. Wright & Company, and J. Howard Gould, creditors, and object to the allowance of claim of each and every of those creditors whose claims are attached to this objection, and move the court to disallow and expunge each and every of them from participation in this case, for that, as to each proof of claim:

(a) The said claimant has failed to comply with the mandatory provisions of the Bankruptcy Act, Section 57 (a) and (b), has failed to comply with General Order No. 21 in bankruptcy and with the mandatory provisions of the Municipal Bankruptcy Act (11 U. S. C. A. 403 (e)), in that said claimant did not file the original of said securities with the proof of claim as required aforesaid;

(b) The claimant, or his predecessors in interest, has been given preferential treatment in violation of 57 (g) of the Bankruptcy Act, in that substantial payments of interest (and interest coupons) were paid upon said securities, in excess of the amount paid to other claimants whose securities were on a parity, voidable under the provisions of said Act, and said preference by the present

holder has not been surrendered to this court. The amount of said preference is not known to the objector and can be ascertained only by production of the records of the said City of Coral Gables and testimony introduced in reference thereto.

AMERICAN NATIONAL BANK OF NASHVILLE, TENNESSEE,
ED. C. WRIGHT & CO.,
J. HOWARD GOULD,
By BASS, BERRY & SIMS,
American Trust Building,
Nashville, Tennessee.
WYLIE AND WARREN,
Hall Building,
St. Petersburg, Florida.
JOSEPH P. LEA, JR.,
705 Florida National Bank Bldg.,
St. Petersburg, Florida.
(S.) By JOSEPH P. LEA, JR.,
Attorneys for said Objecting Creditors.

J. Edwin Larson, Ex. Off., Treas. Dade Co., Tallahassee, Fla.

Ada B. Williams, Richmond, Ind.

Nick Weis, Miami, Florida.

Mary B. Cooley, Mt. Vernon, N. Y.

Nion Fisher Barkey, Baltimore, Md.

Emma McFarland, Augusta, Kansas.

Monarch Furniture Co., Jamestown, N. Y.

William Walter Smith, Pontiac, Michigan.

Isabel S. Wilkinson, Ramsey County, Minn.

Hartwick National Bank, Hartwick, N. Y.

Kuhn, Morgan & Co., First National Bank Bldg., Tampa, Fla.

William J. Mayer, Brooklyn, N. Y.

Mrs. Annie M. Thomas, Baltimore, Md.

John Van De Velde, Miami Beach, Fla.

H. R. Bohnert, Miami, Fla.

Gertrude L. Morrison, Long Island, N. Y.

Joseph W. Cushing, Baltimore, Md.

Edmond Duval Dickey, Hannibal, Missouri.

Evelyn M. Dourie, Lyons, Colo.

Bertha D. Kurtz, Miami, Fla.

Mary M. Lahr, Berrein Co., Michigan.

James C. Bronner, Little Falls, N. Y.

Camelia E. Codner, New Hartford, N. Y.

Elizabeth Henderman, Hornell, N. Y.

Thomas F. Keuney, Winter Park, Fla.

Ellen Transue, Canton, Ohio.

Norman P. Beebe, Niles, Michigan.

George K. Hauswich, New York, N. Y.

American Title Ins. Co., Coral Gables, Fla.

Willis Earle, North Thetford, Vt.

Genessee Valley National Bank & Tr. Co., Genessee, N. Y.

Kurtzon Bros., Att: Mr. Morris Kurtzon, Chicago, Ill.

Percy W. Brooks, Norwalk, Conn.

Bissell Carpet Sweeper Co., 210 Erie St., Grand Rapids, Michigan.

Catholic Ladies of Columbia, Att: Sarah F. Dunn, Secy., Canton, Ohio.

T. Elizabeth McCombs, Greensboro, N. C.

Emily Louise Menhimick, 585 Nastraud Ave., Brooklyn, N. Y.

Middle Tennessee Bank, Att. C. A. Ross, Cashier, Columbia, Tenn.

Marcia C. Matthews, McAllen, Tex.

J. H. & I. H. Ozias, Coral Gables, Fla.

Ester L. Seidman, Grand Rapids, Michigan.

Ellen C. Weller, R. F. D. #1, Boyertown, Pa.

Jesse Bookstauer, Middletown, N. Y.

Emogene N. Costerline, Homell, N. Y.

Equitable Reserve Assn., Neenah, Wis.

William Dululier, New York, N. Y.

Albert D. Ferguson, Philadelphia, Pa.

Blanche B. Garrell, Little Valley, N. Y.

Garner F. Hill, Gladstone, N. J.

Jesse L. Holmes, Tucson, Ariz.

Mrs. Alfred G. Kay, Chester, N. J.

William Tate, Closter, N. J.

Western Bohemian Fraternal Assn., Cedar Rapids, Ia.

First Trust Co., Miami, Fla.

Charles D. Aaron, c/o Detroit Trust Co., Detroit, Michigan.

Elamen B. Adae, P. O. Box 777, Miami Beach, Fla.

Edith S. Ahbe, c/o Fla. Natl. Bank & Tr. Co., Miami, Fla.

Anderson & Co., c/o Fidelity-Phila. Trust Co., 135 So. Broad St., Philadelphia, Pa.

Dr. W. F. Andes, Huntington Bldg., Miami, Fla.

Arkport State Bank, Box 135, Arkport, N. Y.

M. M. Armstrong, 1 Wall St., New York, N. Y.

D. E. Arries, 415 Tampa St., Tampa, Fla.

Simon Askin, 425 4th Ave., New York, N. Y.

Atlas Finance Co., 120 Seward Ave., Detroit, Michigan.

Gladys Atterbury, 5 Patchin Place, New York, N. Y.

Christina F. Atwood, 25 Clinton St., Milo, Maine.

H. W. Austin, c/o John Nuveen & Co., 135 S. La Salle St., Chicago, Ill.

Ava Investment Co., 609 Lumber Exchange, Minneapolis, Minn.

Cordelia F. Baither, 2655 Talmade Rd., Toledo, Ohio.

The Baltimore Commercial Bank, 26 South St., Baltimore, Md.

David Barnes, Box 1904, Orlando, Fla.

Ethel Biggs, 3102 Brightwood Ave., Baltimore, Md.

Bank of Cattaraugus, 24 Main St., Cattaraugus, N. Y.

Bank of Holland, Holland, N. Y.

Sadie E. Banks, 601 Third St. N. W., Rochester, Minn.

Ernest E. Barber, 1st National Bank of Niles, Niles, Michigan.

William T. Beattie, 18 Windermere Ave., Arlington, Mass.

James S. Benn, Jr., 819 Montgomery Ave., Bryn Mawr, Pa.

Henry G. Bennstein, 5 Beekman St., New York, N. Y.

R. Bloss Billings, 1637 Genesee St., Utica, N. Y.

Biddle, Whelen & Co., 1606 Wlanut St., Philadelphia, Pa.

Theresa E. Bishow, 520 W. 158th St., New York, N. Y.

Chas. H. & Isabelle O. Bishop, 905 Market St., Lemoyne, Pa.

Clarence S. Bissell, 308 Comer Bldg., Birmingham, Ala.

Dr. L. W. Blake, Manatee River Bank & Trust Co., Bradenton, Fla.

Algernon Blair, First National Bank Bldg., Montgomery, Ala.

Harry A. Brost, 32 W. 37th St., Bayonne, N. J.

Board of County Commissioners, Dade County, Miami, Fla.

Walter J. Bothwell, 19311 Woodston Road, Detroit, Michigan.

S. H. Bowman Lumber Co., 1110 No. Western Bank Bldg., Minneapolis, Minn.

Albert K. Box, Pulaski, N. Y.

Elsie A. Bradshaw, 19 Liberty St., Orlando, Fla.

Brandon & Co., 39 Broadway, New York, N. Y.

David L. S. & Mercer T. Brewster, Quantico, Va.

Brotherhood of Locomotive Firemen & Enginemen, 418 Keith Bldg., Cleveland, Ohio.

Percy W. Brooks, 625 Landor Lane, Pasadena, Calif.

Bettie Jane Brossier, 754 Wilkinson Ave., Orlando, Fla.

Arthur E. Brown, 223 Washington St., Wellesley Hills, Mass.

Horatio A. Brown, 701 Reynolds Bldg., Jackson, Michigan.

John S. & Cyril H. Brumback, 1005 Second National Bank Bldg., Toledo, Ohio.

Elmer S. Brunner, York Haven, Pa.

Louis P. Buck, 8435 107th St., Richmond Hill, N. Y.

Tracy V. Buckwalter, Timken Roller Bearing Co., Canton, Ohio.

Leo R. Buder, 3124 Allen Ave., St. Louis, Mo.

Alex H. Campbell, 48 Atlantic Ave., Buffalo, N. Y.

Arthur B. Campbell, 389 Elmwood Ave., Buffalo, N. Y.

J. E. Canning, 4761 Liberty Ave., Pittsburgh, Pa.

Edwin L. Cannon, 1978 Union Commerce Bldg., Cleveland, Ohio.

Marion Gratz Carr, 323 No. Broadway, St. Louis, Mo.

Herman P. Chelius, Moultrie St., Dorechester, Mass.

Julia C. Chrisman, 4847 Leland St., Bethesday, Md.

Florence J. Churchill, 80 Florida Ave., Amsterdam, N. Y.

The Citizens State Bank, Clare, Mich.

City of Miami, Miami, Fla.

The City National Co. of Miami, Miami, Fla.

Joseph M. Coale, 511 Keyser Bldg., Baltimore, Md.

Cornelia E. Codner, 2 Sanger Avenue, New Hartford, N. Y.

Phillip C. Collins, Wyncote, Pa.

Benjamin T. Cooke, 185 Montague St., Brooklyn, N. Y.

Coral Gables, Inc., Coral Gables, Fla.

Grace M. Corbin, Friendship, N. Y.

Chas. B. Corser, John Nuveen & Co., 135 S. La Salle St., Chicago, Ill.

Ada Cotterel, 18 Paxtang Ave., Harrisburg, Pa.

J. W. Crews, Wauchula, Fla.

Croatian Fraternal Union of America, 3441 Forbes St., Pittsburgh, Pa.

Cross & Co., C/o The Penna. Co., Packard Bldg., Philadelphia, Pa.

Carolina M. Crowell, P. O. Box 1299, Orlando, Fla.

Edward H. Dahly, 420 Lexington Avenue, New York, N. Y.

John S. Dalrymple, 952 N. Western Bank Bldg., Minneapolis, Minn.

James P. Danielson, Jamestown, N. Y.

Anna Davis, 215 Clinton Place, Hackensack, N. J.

Clarence C. Davis, Deckerville, Michigan.

Isabelle Davis, 215 Clinton Place, Hackensack, N. J.

Joseph H. Davison, 1001 Lake Blvd., Bemidji, Minn.

Charles H. Davis, 1 Rittenhouse Rd., Broomall, Pa.

Dearborn State Bank, Dearborn, Michigan.

Florence Harmon Dock, 504 West 110 St., New York, N. Y.

Adolph F. Dohme, 188 Lincoln Ave., Rockville, Center, Long Island, N. Y.

Harry C. Drueding, Girard Trust Co., Broad & Chestnut St., Philadelphia, Pa.

Joseph B. Dubreuil, 36 Dunwoodie St., Yonkers, N. Y.

William A. Dwyer, Genesee, N. Y.

Fred G. Dethlefs, 543 Rockdale Ave., Cincinnati, Ohio.

Edmund Duval Dickery, 2312 Bird St., Hannibal, Mo.

Evelyn M. Downie, 1417 E. 55th St., Apt. D., Seattle, Wash.

William Dublier, Jr., 72 Esplanade, New Rochelle, N. Y.

P. S. Dusenbury, 1872 S. Bayshore Lane, Miami, Fla.

Edward Eastwick, Jr., Greenwich, Conn.

David Edelstein, c/o Athletic Club, St. Paul, Minn.

Anne P. Edie, 1628 16th St. N. W., Washington, D. C.

Jeanne M. Edmonds, Central Hanover Bank 42nd St. at Madison Ave., New York, N. Y.

Equitable Beneficial Life, Health & Accident Co., 319 Market St., Camden, N. J.

Equitable Reserve Association, Neenah, Wis.

Erie County Trust Co., East Aurora, N. Y.

Charles Hull Ewing, Box 349, Sarasota, Fla.

Henry Fahlbusch, Box 278, Syosset, N. Y.

Whitman Geo. Ferrin 33 So. Main St., Mahonoy City, Pa.

John T. Fetherston, 12 Market St., Lewisburg, Pa.

Fidelis Corp., 51 N. W. 1st Street, Miami, Fla.

Finch, Wilson & Co., 120 Broadway, New York, N. Y.

Luther L. Finch, Grand Rapids Trust Co., Grand Rapids, Michigan.

T. M. Fincher, 235 Shoreland Arcade, Miami, Fla.

First National Bank of Rockaway, Rockaway, N. J.

First National Bank of Tampa, Tampa, Fla.

Richard S. Foltz, Genesee, N. Y.

A. V. Foster, 332 Spitzer Bldg., Toledo, Ohio.

Walter W. Foskett, Harvey Bldg., West Palm Beach, Fla.

Leila R. Foster, 2313 Robinwood Ave., Toledo, Ohio.

Ernest J. Frazier, 214 Sixth St. S. E., Washington, D. C.

Frazier, Jelke & Co., 40 Wall St., New York, N. Y.

Clara D. French, 608 San Esteban Ave., Coral Gables, Fla.

Frank French, Avoca, N. Y.

Jared P. Gage, 2728 Pine Tree Drive, Miami Beach, Fla.

Gamewell Co., 1238 Chestnut St., Newton Upper Falls, Mass.

Virginia Geeslin, 432 Delaney St., Orlando, Fla.

John William Geil, 30 Lenox Avenue, Lynbrook, L. I., N. Y.

Genesee Valley National Bk. & Tr. Co., Genesee, N. Y.

Lillie M. Gibert, 2413 Salutaris Ave., Cincinnati, Ohio.

Harrison T. Gibson, 308 No. 16th St., Philadelphia, Pa.

Franklin B. Geisler, 2830 No. Sherman Blvd., Milwaukee, Wis.

Robert M. Gluck, 25 Broad, New York, N. Y.

Meyer Gold, 1115 No. Greenway Drive, Coral Gables, Fla.

Max Goldschmidt, 570 Westminister Road, Brooklyn, N. Y.

Mr. John Gorke, 7810 W. Chester Pike, Upper Darby, Delaware County, Pa.

Wm. A. Gracie, 122 So. Centre St., Cumberland, Md.

Louis H. Greenbaum, 903 Lake Drive, Apt. 7 CC Baltimore, Md.

A. F. & A. W. Greer, 1729 Allapattah Drive, Miami, Fla.

Edward A. Grenelle, 1608 Highland Ave., Rochester, N. Y.

Guardian Depositors Corp., 751 Griswold St., Detroit, Michigan.

John L. Hammond, Vanceburg, Ky.

H. Helen Hanson, 425 So. Lansdowne Ave., Lansdowne, Pa.

William H. Harby, 446 Old South Bldg., Boston, Mass.

Augustus Harris, 306 Park Place, Brooklyn, N. Y.

Wm. F. Hartranft, 602 Pavonia Ave., Jersey City, N. J.

Margaret C. Heimburger, 1055 E. Walnut St., Springfield, Mo.

Lauretta Reeb Henrich 127 Highland Ave., Buffalo, N. Y.

Francis H. Herrick, 715 Washington St., Watertown, N. Y.

Louis H. Hilke, Jr., 750 Irving Place, Secaucus, N. J.

George E. Hills, 11 Beacon St., Boston, Mass.

Garner F. Hill, Gladstone, N. J.

Sigmund Hirsch, 123 W. 93rd St., New York, N. Y.

Ralph Hochstetter, 612 M. & T. Bldg., Buffalo, N. Y.

Chas. B. Hoey, 137 E. Budge St., Oswego, N. Y.

George Hoke, 931 Northwestern Bank Bldg., Minneapolis, Minn.

Mrs. Caroline Holding, 1725 Magnolia Drive, Cleveland, Ohio.

Henry H. Hollencamp, 15-17 So. Jefferson St., Dayton, Ohio.

Jesse L. Holmes, 2930 E. Third St., Tucson, Ariz.

Albert L. Hopkins, 1 No. LaSalle St., Chicago, Ill.

Iskander Hourwich, 67 Wall Street, New York, N. Y.

John B. Houston, 38 Watkins Ave., Middletown, N. Y.

Alice P. Hutchinson, 1008 Taylor St., Hollywood, Fla.

George M. Howe, Manufacturers & Traders Trust Co., Buffalo, N. Y.

Hattie J. Hunt, 35 Knapp Ave., Middletown, N. Y.

Horace H. Irvine, 2257 First National Bank Bldg., St. Paul, Minn.

Roscoe Irwin, 11 Pearl St., Albany, N. Y.

Louis B. Johnson, Cattaraugus, N. Y.

Sophie M. Jones, 9 Garrison Ave., Jersey City, N. J.

Max Kade, 440 Washington St., New York, N. Y.

Emilie Keller, 1924 Niagara St., No. Falls, N. Y.

S. Virginia Kelly, 2304 Avalon Ave., Buffalo, N. Y.

Hiram A. Kendall, 448 W. Delaware Ave., Buffalo, N. Y.

Mabel S. Kidd, 63d & Oxford Sts., Philadelphia, Pa.

Grace E. Klein, 55 E. 10th St., St. Paul, Minn.

Elsie Rosenstock Klotsch, 6312 Wallis Ave., Baltimore, Md.

Ellah R. Kramer, Leesburg, Fla.

Mrs. Johanna Kuhn, 300 Park Ave., New York, N. Y.

Leon M. Kysor, 11 Central St., Hornell, N. Y.

Kenneth B. Lamond, 517 So. Wells St., Chicago, Ill.

Benjamin F. Landt, 101 W. Warris Ave., La Grange, Ill.

Adele Lanpher, 482 Portland Ave., St. Paul, Minn.

Marion Lanpher, 482 Portland Ave., St. Paul, Minn.

Ernest B. Latham, 1300 Granada Bldg., Coral Gables, Fla.

Daniel J. Lavery, Mazeppa, Minn.

Herman Lavery, Cattaraugus, N. Y.

John G. Lamoree, 1499 Highland Ave., New Castle, Pa.

Cyrus J. Lawrence & Sons, 115 Broadway, New York, N. Y.

Helena Catherine Lehman, 7024 Hamilton Ave., Pittsburgh, Pa.

George E. Leonard, 322 Broadway, New York, N. Y.

Carrie D. Levy, 790 Clinton Springs Ave., Avondale, Cincinnati, Ohio.

Harry Lindenbaum, 185 Montague St., Brooklyn, N. Y.

Clarence Litzenburg, Box 294, Cumberland, Md.

Dora A. Lockard, 1354 E. 72nd Place, Chicago, Ill.

Ettie Corbusier Lockwood, Nelson House, Poughkeepsie, N. Y.

Mary W. Lohr, 815 Broad St., St. Joseph, Michigan.

James C. Loughry, 144 California St., Ridgewood, N. J.

Louise B. Lunsford, 2732 Biscayne Bldg., Miami, Fla.

Eugene P. McCahill, 730 McKnight Bldg., Minneapolis, Minn.

F. Eliz. McCombs, 435 Camden Road, Moorestown, N. J.

Mary McKay McCreery, Greenwick, Conn.

David C. McDonald, 1305 Alhambra Circle, Coral Gables, Fla.

Birdie May McDonald, 148 E. 48th St., New York, N. Y.

Franklin A. McKenzie, 305 Broadway, New York, N. Y.

Edwin P. McWayne, Fayette, N. Y.

Fred S. McWilliams, 42 Monhagan Ave., Middletown, N. Y.

Frederick W. Mackmull, 50 W. St., New York, N. Y.

Alfred E. Mallon, Route #1, Hopkins, Minn.

Marguerite A. Mallen, 3564 81st St., Jackson Hts., N. Y.

John L., Henry R. & Wm. H. Manahan, 5402 N. Campbell Ave., Chicago, Ill.

Mansell & Co., 45 Wall St., New York, N. Y.

Edward F. Many Hampton, N. J.

Bernice Martin, 7 Knapp Ave., Middletown, N. Y.

Mabel H. Martin, 7 Knapp Ave., Middletown, N. Y.

Miss Margaret C. Mayo, 210 Nassau Ave., Kenmore, N. Y.

Merchants & Marine Bank, Pascagoula, Miss.

Gero. J. & Martha M. Merked, 87-31 94th St., Woodhaven, N. Y.

W. Calder Metzger, 2232 No. 2nd St., Harrisburg, Pa.

Jacob Nast, Genesee, N. Y.

The National Bronx Bank of N. Y., 460 Melrose Ave., New York, N. Y.

Madeleine N. Newman, 8120 E. Jefferson Ave., Detroit, Michigan.

Pamela L. Nicol, 227 W. Lafayette Ave., Baltimore, Md.

R. E. Olds Company, Olds Tower Bldg., Lansing, Michigan.

Melvin O'Reilly, 1217 W. 59th St., Kansas City, Mo.

Frank C. Pahlow, 1224 Bunker Hill Road, Ashtabula, Ohio.

The Parkwood Company, 1310 Second National Bank Bldg., Toledo, Ohio.

Bettie Rupley Patton, 1212 DuPont Bldg., Miami, Fla.

Joseph W. Patchett, R. D., Geneva, N. Y.

O. L. Peacock, Ft. Pierce, Fla.

Edward I. Peck, 3008 Carlton Road, Shaker Heights, Ohio.

Peninsular Securities, Inc., Box 464, Detroit, Michigan.

T. Morris Perrot, Jr., 808 LaFayette Bldg., Philadelphia, Pa.

John A. Peterson, 604 Vandiver Bldg., Montgomery, Ala.

John J. Phelps, 5 Mercer St., Hackensack, N. J.

Eugene R. Phillips, 253 Webster Ave., Winter Park, Fla.

Emma R. Piatt, 400 W. 119th St., New York, N. Y.

John S. Pillsbury, 301 Metropolitan Life Ins. Bldg., Minneapolis, Minn.

E. P. Porter, 1 Glenada Place, Brooklyn, N. Y.

Wm. P. Porter, East Jordan, Michigan.

Frank J. Potter, 124 Canal St., Ellenville, N. Y.

Poughkeepsie Trust Co., Poughkeepsie, N. Y.

Helen Powers, Worthington Ridge, Berlin, Conn.

Henry Priester, Box 154, Middletown, N. Y.

Joseph M. Proskauer, 11 Broadway, New York, N. Y.

P. P. Prudden, 171 Clarke Ave., Palm Beach, Fla.

Robert E. Ramsey, 500 Wolfe Lane, Pelham Manor, N. Y.

Wm. Raymond, 324 N. Larchmond Bldg., Los Angeles, Calif.

Real Estate Investment Co., 715 City National Bank Bldg., Lansing, Michigan.

John Jacob Reck, 537 43d St., Union City, N. J.

T. D. Reducka, R. D. #2, Box 44 D., Coral Gables, Fla.

Rensselaer Valve Co., Troy, N. Y.

Fred E. Reuning, 531 Lawrence Ave., Bristol, Va.

Homer J. Rhode, 832 So. Greenway Drive, Coral Gables, Fla.

Chas. J. Rice, Friendship, N. Y.

Wm. L. Richards, 125 Polk St., Cumberland, Md.

Philip O. Roach, 512 E. 39th St., Baltimore, Md.

Wm. Oakley Roach, Jr., 512 E. 39th St., Baltimore, Md.

Laura G. Roberts, Box 397, Lebanon, Pa.

Fred Ritz, Napoleon, Ohio.

Geo. Robson, c/o Robson, Link & Co., Ingraham Bldg., Miami, Fla.

John Bruce Roop, 2621 Duke St., Alexandria, Va.

Bessie H. Rosenberg, c/o James N. Rosenberg, 165 Broadway, New York, N. Y.

James N. Rosenberg, 165 Broadway, New York, N. Y.

S. Sam Roszel, Front Royal, Va.

Ellis L. Rowe, Round Lake, Sar. County, N. Y.

Wesley E. Rutherford, Girard, Ill.

Carl F. Sablin, 3365 Royal Road, Miami, Florida.

St. John The Evangelis Slovak Independent, Evangelical A. C. Society, 313 W. Water St., Lansford, Pa.

Frank L. Sackett, Fredonia, N. Y.

Herbert E. Sanderson, Orlando, Fla.

James W. Schade, 189 Merriman Road, Akron, Ohio.

Jos. A. Schantz, 247 St. Paul St., Rochester, N. Y.

Harry J. Schwehm, 104 Manheim St., Philadelphia, Pa.

Albert Schneider, Mullica Hill, N. J.

Adolph Seidel, 1010 Prospect Ave., Toledo, Ohio.

Adolph Seitner, 314 E. Genesee Ave., Saginaw, Michigan.

M. L. Seidman, 80 Broad St., New York, N. Y.

Wm. T. Shackelford, C of C Bldg., Baltimore, Md.

Chas. C. Sharman, 1710 Congress Bldg., Miami, Fla.

Victor J. Sharman, First Trust Bldg., Miami, Fla.

Norman Tharpe, 315 W. 97th St., New York, N. Y.

Sherburn National Bank, Sherburn, Minn.

Walter W. Shields, 1217 Court St., Port Huron, Michigan.

John K. Shryock, 4509 Regent St., Philadelphia, Pa.

Otto Sierberns, Spring Valley, Wis.

Stella A. Simmons, Eagle Point Colony, Rossford, Ohio.

Herbert J. Sims, 90 Broad St., New York, N. Y.

Seymour E. Sims, 90 Broad St., New York, N. Y.

Geo. L. Singletary, Leesburg, Fla.

Gyda M. Smith, 901 Maple Ave., Decorah, Ia.

Katherine M. Smith, 101 E. Mt. Royal Ave., Baltimore, Md.

R. Z. Smith, 202 Main St., Ft. Plain, N. Y.

May B. Snider, Park Lane Hotel, Toledo, Ohio.

Aimee M. Somermeier, Englewood, Fla.

J. F. Spellman, 851 Walnut St., Orlando, Fla.

Louis T. Speyser, 782 Ellicott St., Buffalo, N. Y.

Edwin S. Stackhouse, 111 Park Ave., Greenwich, Conn.

Mary C. Stackpole, Dauphin, Ga.

Ruth R. Stadler, Grosse Ile, Mich.

Walter A. Staub, 90 Broad St., New York, N. Y.

Otto K. Stewart, Hornell, N. Y.

Irene A. Stone, Bristol, Va.

Gordon Stoner, 6660 Mt. Elliott Ave., Detroit, Michigan.

Elsie W. Stubbelfield, 215 So. Jefferson Rd., Webster Groves, Mo.

Supreme Forest Woodmen Circle, WOW Bldg., Omaha, Neb.

Edwin F. Tausign, Dauphin Bldg., Harrisburg, Pa.

Herman Tausig, 9 Aberdeen Ave., Harrisburg, Pa.

John D. Taylor, Arkport, N. Y.

The Tiedtke Bros. Co., 1310 Second National Bank Bldg., Toledo, Ohio.

Grace H. Tierney, Wallace, N. Y.

Frank W. Tindle, 70 Niagara St., Buffalo, N. Y.

Union National Bank, Friendship, N. Y.

Union Savings Bank, Manchester, Michigan.

Dudley R. Van Ness, 626 Ocean Dr., Miami Beach, Fla.

T. R. Van Ness, 626 Ocean Dr., Miami Beach, Fla.

Ove Vett, 105 W. Adams St., Chicago, Ill.

Thomas W. Warner, 891 So. Orange Grove Ave., Pasadena, Calif.

William C. Weber, 57 Wm. St., New York, N. Y.

Violet Harbauer Wehrle, 1346 Ansel Road, Cleveland, Ohio.

Bertha Wells, 2310 7th St., Riverside, Calif.

Ethelwynne Wells, 103 Wash. Ave., Chatham, N. J.

Westminister Theological Seminary, Chestnut Hill, Philadelphia, Pa.

Robert M. Weymouth, Glen Wilton, Va.

Ellsworth A. Wheeler, 14 Watkins Ave., Middletown, N. Y.

Frederic J. Whiton, 1 West 72nd St., New York, N. Y.

Chas. E. & Ethel A. Whowell, 1809 Albermarle Road, Brooklyn, N. Y.

Kneeland B. Wilkes, 305 Niagara St., Buffalo, N. Y.

Isabel S. Wilkinson, 665 Fairmount Ave., St. Paul, Minn.

Ada B. Williams, Lake Alfred, Fla.

Eva L. Williams & Lillian C. Lantell, Crescent City, Fla.

Fred Williams, c/o Wm. Bros., St. Joseph, Michigan.

George E. Williams, 1609 Penn St., Harrisburg, Pa.

G. C. Willughby, 315 Soledad St., Salinas, Calif.

G. C. Willoughby, Box 38, Gen. P. O., New York, N. Y.

Robbin B. Wolf, 801 Plaza Bldg., Pittsburgh, Pa.

Frances Wolfson & Mitchell W. Wolfson, Box 2440, Miami, Fla.

Henry Zoller, Jr., 402 American Bldg., Baltimore, Md.

Mrs. Helen E. Jones, Portland, Me.

S. Rudolph Light, Kalamazoo, Michigan.

P. C. Gorman, Leesburg, Fla.

Robert B. Carvey, Montgomery, N. Y.

Elmer J. Correll, Hamburg, Pa.

Raymond E. Cookston, Cleveland, Ohio.

Norman G. Geiser, Binghamton, N. Y.

Myrtle E. Dean, Miami, Fla.

Fred Brenner, New York, N. Y.

Florence M. McCahan, Philadelphia, Pa.

Wm. J. McCahan, Philadelphia, Pa.

Moyer & Co., Att: Clarence L. Moyer, Philadelphia, Pa.

Caleb J. Milne, Jr., Philadelphia, Pa.

Eugene P. McCahill, Minneapolis, Minn.

Jas. Garraham, Boston, Mass.

Mattie E. Brooks, Riverton, N. J.

Ben A. Merty, Jordon, Minn.

Edw. C. Meyer, Edwardsville, Ind.

Theodore H. Muendlein, Baltimore, Md.

Arthur W. Machen, Baltimore, Md.

Jos. L. Moore, Ft. Plain, N. Y.

V. C. Noggle, Miami, Fla.

Nick Weis, Miami, Fla.

Willoughby Camera Stores, Inc., Att: J. K. C. Antes, Treas., New York, N. Y.

Peyton L. Wilson, Miami, Fla.

Chester E. Taylor, Harrisburg, Pa.

Laurel M. Seeley, Ann Arbor, Michigan.

Geo. L. Singletary & W. F. Robinson, Leesburg, Fla.

Ross Properties, Inc., Att: Mitchell Wolfson, Secy-Treas., Miami, Fla.

Morris G. Rohrbach, Spangesville, Pa.

Chas. G. Petreims, Middletown, N. Y.

Lewis H. Alwine, Spring Grove, Pa.

Elmer W. Howell, Buffalo, N. Y.

State Bank of Fairfax, Att: A. E. Carver, Cashier, Fairfax, Minn.

(Note: Notice of Objections to Claim same that attached as Exhibit 2 to Objections to Claims filed January 17, 1941.)

211 AFFIDAVIT.

State of Florida,
County of Dade, ss.

Personally appeared before me, a Notary Public in and for the County and State aforesaid, Joseph P. Lea, Jr., to me well known and who by me being duly sworn, deposes and says that he is counsel for one of the objecting creditors above named and, as such, he has authority to make this affidavit; that on or before the 18th day of January, A. D. 1941 he notified each and every of said creditors listed herein under Exhibit 1 whose claim has been objected to, sending each of said creditors a copy of the notice hereto attached and marked Exhibit 2, and mailing said notice to the last known address of said creditor as disclosed in these proceedings.

JOSEPH P. LEA, JR.
(Joseph P. Lea, Jr.)

Subscribed and sworn to before me this 20th day of January, A. D. 1941.

IONE BROTHERSON,
Notary Public.

My Commission Expires Aug. 7, 1944.

Bonded by Mass. Bonding & Ins. Co.

On January 20, 1941 Objections to Claims were filed in words and figures as follows, to-wit:

212 OBJECTIONS TO CLAIMS.

(Title Omitted.)

Comes now American National Bank of Nashville, Tennessee, Ed. C. Wright & Company, and J. Howard Gould, creditors, and object to the allowance of claim of each and every of those creditors whose claims are attached to this objection, and move the Court to disallow and expunge each and every of them from participation in this case, for that, as to each proof of claim:

(a) The said claimant has failed to comply with the mandatory provisions of the Bankruptcy Act, Section 57 (a) and (b), has failed to comply with General Order No. 21 in bankruptcy and with the mandatory provisions of the Municipal Bankruptcy Act (11 U. S. C. A. 403 (e)), in that said claimant did not file the original of said securities with the proof of claim as required aforesaid;

(b) The claimant listed herein has failed to comply with the mandatory provisions of the Municipal Bankruptcy Act (11 U. S. C. A. 403 (a)) in that said claimant has not attached to the proof of claim copies of the instrument or instruments in writing showing the authority of the said claimant to act in its representative capacity, as required by the Act.

AMERICAN NATIONAL BANK OF NASHVILLE, TENNESSEE,
ED. C. WRIGHT & CO.,
J. HOWARD GOULD,
By BASS, BERRY & SIMS,
American Trust Building,
Nashville, Tennessee.

WYLIE AND WARREN,
Hall Building,
St. Petersburg, Florida.
JOSEPH P. LEA, JR.,
705 Florida National Bank Bldg.,
St. Petersburg, Florida.
(S.) By JOSEPH P. LEA, JR.,
Attorneys for said Objecting Creditors.

213½ AFFIDAVIT.

State of Florida,
County of Dade, ss.

Personally appeared before me, a Notary Public in and for the County and State aforesaid, Joseph P. Lea, Jr., to me well known and who by me being duly sworn, deposes and says that he is counsel for one of the objecting creditors above named and, as such, he has authority to make this affidavit; that on or before the 18th day of January, A. D. 1941 he notified each and every of said creditors listed herewith under Exhibit 1 whose claim has been objected to, sending each of said creditors a copy of the notice hereto attached and marked Exhibit 2, and mailing said notice to the last known address of said creditor as disclosed in these proceedings.

JOSEPH P. LEA, JR.
(Joseph P. Lea, Jr.)

Subscribed and sworn to before me this 20th day of January, A. D. 1941.

IONE BROTHERSON,
(N. S.) Notary Public, State of Florida at large.

My commission expires Aug. 7, 1944.

Elizabeth P. Gordon, Ex., Est. Alexander Gordon, Cumberland, Me.

H. A. Grey, Jr., Ex., Estate of H. A. Grey, Waverly, Va.

John A. McCreery, (Agent for Christine Houget) 115 E. 61st St., New York, N. Y.

Richard H. Conklin, Guardian, Barbara Jane Mangus, Los Angeles, Calif.

John E. Page, and John Abbott, Trustees, of Robert P. Gay, Winchester, Mass.

Lulu E. Clarke, Ex., Charles S. Carscallen, New York, N. Y., Room 717, 1 Exchange Place, Jersey City, N. J.

Marine Trust Co. of Buffalo, for John J. Esser, Buffalo, N. Y.

George Barker, Jr., Asst. Tr. Ofcr., Agent for Olivia M. Grillo, National Newark & Essex Banking Co., Newark, N. J.

E. C. Cook for Edna Barber, Palm Beach, Florida.

E. C. Cook for Mary O. Cook, Palm Beach, Fla.

Security Trust Co. Adm., Lindsay Hopkins Estate, Miami, Fla.

Louise B. Johnson, Ex., Estate Grace P. Johnson, Cattaraugus, N. Y.

John F. & Jock Gilbert, Ex., U/W W. H. Gilbert Estate, Red Lion, Pa.

Henry D. Lott, Atty in fact, for Mary P. Oenslager, Brooklyn, N. Y.

Kings County Trust Co., Trustee for Henry A. Schnakenberg, Brooklyn, N. Y.

Paul S. Blanche S. & Stephen M. Ames, Trustees, 39 Broadway, New York, N. Y.

George H. Bradley Estate, Att: Executor, 180 Main St., Hornell, N. Y.

Elmer H. Bright Estate, 84 State St., Boston, Mass.

May S. M. Brown, Estate, Att: M. H. & Bernice Martin, Execs., 7 Knapp Ave., Middletown, N. Y.

Wm. Stanley Brown, Exec., U/W of Kate M. Brown, Pulaski, N. Y.

Annie A. Carlton, c/o Fidelity Union Trust Co., Newark, N. Y.

Central Trust Co., Co-Executor, Estate of Irene C. Cough, Mary Slough Wagner, Harrisburg, Pa.

Colonial Trust Co., Trustee, U/W Joseph L. Becu, 317 Fourth Ave., Pittsburgh, Pa.

Ova Cox, Executor, U/W J. Watson Jeffries, Rosedale, Ind.

James J. Curran, Ralph Citrullo & John Harvilla, Liq. Trustees, Miners State Bank, 224 Sunbury St., Minersville Pa.

Detroit Trust Co. & Leila H. Canfield, Trustees, U/W R. Bishop Canfield, 201 W. Fort St., Detroit, Michigan.

Eckfeld & Company, c/o R. F. C., 607 Shelby St., Detroit, Michigan.

John J. Esser, c/o Marine Trust Co., 237 Main St., Buffalo, N. Y.

Fidelity Title & Trust Co. Trustees, U/W Solon C. Kelly, Sr., Stamford, Conn.

Otto Foeste, c/o Fidelity Union Trust Co., 755 Broad St., Newark, N. J.

Fla. Natl. Bank & Tr. Co. as Successor, Trustee for Woodlawn Park Cemetery Perpetual Care Fund, Miami, Fla.

Anne Geismar, c/o James N. Rosenberg, 165 Broadway, New York, N. Y.

Blanche B. Gorrell, c/o, Cattaraugus County Bank, Little Valley, N. Y.

Alex J. Groesbeck, Receiver, Guardian Detroit Union Group, Inc., Box 464, Detroit, Michigan.

Charles B. Hill & Wm. E. Griswold, Trustees, 1750 N. Ashland Ave., Chicago, Ill.

Mame C. Holbrook, c/o John D. McMaster, 1 Exchange Place, Jersey City, N. J.

Linsey Hopkins Estate, c/o Security Trust Co., Miami, Fla.

Philips S. Isaac, c/o Brenner Bros., 130 W. 31st St., New York, N. Y.

King & Co., c/o City Bank Farmers Tr. Co., 22 William St., New York, N. Y.

Kings County Trust Co. as Trustee for Henry A. Schnakenberg, 342 Fulton St., Brooklyn, N. Y.

Hannah Lewis, c/o A. Leipzig Inc., 11 E. 26th St., New York, N. Y.

John Manfull McIntosh & Henry P. McIntosh, Jr., Successor Trustees, 10111 Euclid Ave., Cleveland, Ohio.

MacLean & Co., c/o Mfg. Trust Co., New York, N. Y.

Minda E. Moore, c/o Mercantile Trust Co. of Baltimore, Baltimore, Md.

R. Adlington Newman Estate, Att: Executor, 3380 Penobscot Bldg., Detroit, Michigan.

Elsie C. Noble, c/o Manufacturers Trust Co., 707 Fifth Ave., New York, N. Y.

Mary P. Oenslager, c/o Kings County Trust Co., 342 Fulton St., Brooklyn, N. Y.

John D. Otteson, 177 Montague St., c/o Brooklyn Trust Co., Brooklyn, N. Y.

St. Louis Union Trust Co., Executor of Est. Benj. Gratz, 323 No. Broadway, St. Louis, Mo.

Kathryn J. Schneller, Exec., U/W J. S. S., 119 Pine St., Catasauqua, Pa.

St. Lawrence County National Bank, Guardian, Frank A. Augsbury, Jr., Canton, N. Y.

Rev. Joseph Schmidt, Trustee, U/W Rev. P. S. Huegel, Box 323 Carlisle, Pa.

Second National Bank & Trust Co. of Saginaw, Successor Trustee U/W of Joseph A. Grohman, Saginaw, Michigan.

Harvey S. Souder Estate, Walter B. Sander, Adm., Souderton, Pa.

John T. DeBlois Wack, c/o First National Tr. & Savings Bk., Santa Barbara, Calif.

Mattie S. Weber, Trustee, Est. Harold Weber, 423 Rockingham St., Toledo, Ohio.

Rufus Wiles, c/o Ft. Plain National Bank, Ft. Plain, N. Y.

Mrs. Dorothea B. Wofford, c/o W. E. Brown, Schweiter Bldg., Wichita, Kansas.

Claus H. Wohlers, c/o S. William Wohlers, 1451 Myrtle Avenue, Brooklyn, N. Y.

Chas. J. Gorman, Exec., Estate of John Gorman, Pulaski, N. Y.

Estate of Harry M. Schade, Att: Ruth R. Anderson, Ex., Lynbrook, N. Y.

D. J. Weare, Atty in fact for Wiley & Co., New York, N. Y.

Helen Frances Valentine, Exec., Estate of Chas. A. Valentine, Yonkers, N. Y.

Marvin L. Clapp, Trust Officer, Bank of Jamestown, Ex., Estate of Emily F. Whitley, Jamestown, N. Y.

Thomas D. Green, Trustee, Estate of John Dismukes, New York, N. Y.

W. J. Zalesky, Trustee, Estate of John Dismukes, La Malbie, Quebec, Canada.

(Note: Notice of Objections to Claim same as that attached as that attached as Exhibit 2 to Objections to Claims filed January 17, 1941.)

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220 On January 20, 1941 Objections to claims of Albert Roberts, Jr., were filed in words and figures as follows, to-wit:

OBJECTIONS.

(Caption Omitted.)

Comes now Albert Roberts, Jr., one of the creditors whose claim has been filed in this cause, and objects to the allowance of all of those claims which were filed subsequent to the 26th day of August, A. D. 1940, and as grounds for said objections, says:

1. That the said claims were not filed within the time prescribed by the order of the Court.

2. That said claims were not filed in conformity with the provisions of the Municipal Bankruptcy Act.

WYLIE & WARREN,
By STUART B. WARREN,
Attorneys for Albert
Roberts, Jr.

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221 On January 25, 1941 Petition for Stay Order was filed by Petitioner in words and figures as follows, to-wit:

PETITION FOR STAY ORDER.

(Caption Omitted.)

Now comes The City of Coral Gables, the Petitioner in the above entitled case, and respectfully shows:

1.

This case became at issue and was referred to the Honorable F. M. Hudson, as master, on the 19th day of October, 1940. Thereafter, the said master at a hearing disposed of certain motions pending in the case and then directed that the taking of testimony begin January 20, 1941. The hearing began at two o'clock on that date, and the petitioner introduced most of its direct testimony on the 20th day of January and during the following three days, and then tendered its witnesses for cross examination. Whereupon, the contestants asked for an adjournment for the purpose of studying the record before the cross-examination. Thereupon, the master adjourned the hearing until March 3, 1941.

2.

On or about the 18th day of January, 1941, the American National Bank of Nashville, Tennessee, filed a motion asking the Court to require all the creditors who had filed proofs of claim in this case to file their original securities in Court. The notice of this motion was mailed by said American National Bank of Nashville, Tennessee, by its attorneys, to all the creditors who had accepted the refunding plan in this case, said notice being mailed on or about the 18th day of January, 1941. Said motion stated that it would be called up for hearing on the 20th day of January, or as soon as it might be heard by the master. The master heard the said motion on the 21st day of January, 1941, and denied the same. The taking of testimony continued through January 23, 1941.

3.

While said hearing was in progress and said testimony was being taken, said American National Bank of Nashville, Tennessee, which claims to be a creditor of your petitioner but to which claim your petitioner has objected and still objects, sent to all creditors who had filed consents to the refunding plan in this case, a set of interrogatories containing thirty-four paragraphs with numerous sub-paragraphs. A copy of said interrogatories is hereto attached and made a part hereof and marked Exhibit "A". Neither your petitioner nor any of its attorneys nor anyone connected with The City of Coral Gables knew that said interrogatories had been prepared or would be mailed; nevertheless, they were mailed during the progress of said hearing while attorneys for said bank and the attorneys of your petitioner were in constant contact taking testimony, and when it was easily possible to give such notice, and yet no notice was given and no order of the

Court authorizing the submission of such interrogatories to the creditors was obtained.

4.

Your petitioner alleges that the said interrogatories were unauthorized by law by reason of the fact that such interrogatories could not be submitted by one creditor to another creditor in the case; and by reason of the fact that the case was at issue and was in the process of trial and no order of Court was obtained authorizing the submission of such interrogatories.

5.

Your petitioner alleges that it was improper to send out said interrogatories without an order of the Court and without the petitioner's being given a right to be heard on the same, and, for that reason, this petition is being filed to request the Court to enter a stay order authorizing all the creditors not to answer said interrogatories unless later directed by the Court so to do.

6.

Your petitioner alleges that said interrogatories were so framed as not to present the true situation in this case to the creditors, and they appear to be designed to create prejudice in the minds of the creditors. Petitioner alleges that said interrogatories should be stricken and that, after a hearing on this petition, if this Court decides that said American National Bank of Nashville, Tennessee, has a legal right to propound interrogatories to the other creditors of your petitioner, that said interrogatories should be framed in accordance with the law and with the rules of this Court.

7.

Your petitioner alleges that the filing of said interrogatories is not a bona fide attempt to secure information from the creditors, but is an attempt on the part of the American National Bank of Nashville, Tennessee, to coerce a sufficient number of the creditors to withdraw their claims so as to leave less than 66 2/3% consenting to the refunding plan, and thus to defeat the case. Your petitioner alleges that this is shown by the manner in which the third interrogatory is worded, which does not present the true situation to the creditors. Furthermore, a note is appended to said interrogatory stating that if the answer to said question is in the negative, the remaining interrogatories are waived, otherwise all interrogatories must be answered. Said remaining interrogatories, whether answered or not, are intended to create fear or prejudice in the minds of the creditors and also to create the wrong impression that it was necessary under the law to file the original securities with the Court, although at the time said American National Bank of Nashville, Tennessee, mailed said interrogatories both the said bank and its attorneys knew that the Court and the master had ordered otherwise. The notice served with said interrogatories creates the impression that any creditor who fails to answer the interrogatories will be in contempt of Court, without any order of Court. This impression is false, as the rules make no such provision, and petitioner alleges that said bank and its attorneys knew when they mailed such notice that this was not the law, and yet they sought to cloak themselves with the authority of the Court as to contempt in order to harass and intimidate said creditors.

8.

Your petitioner further shows that the American National Bank of Nashville, Tennessee, is one of less than

6% of the creditors of The City of Coral Gables which have refused to accept the refunding plan, and who are attempting to collect their claims in full, and petitioner alleges that if said bank is a creditor it purchased its securities for only a few cents on the dollar, and yet is trying to force full payment of principal and past due interest, to the detriment of your petitioner and its creditors.

Wherefore, your petitioner prays that the Court enter a stay order which your petitioner may mail to all of its creditors notifying them that they need not answer any of said interrogatories unless later ordered to do so by the Court; that a hearing be had on this petition, after notice, to determine whether said interrogatories should be answered by the creditors, and that this Court grant your petitioner such other relief as this Court may deem proper under the circumstances.

(S.) MORTON B. ADAMS,
City Attorney for The City Of Coral Gables.
(S.) IRA H. HAYCOCK,
(S.) D. H. REDFEARN,
Of Counsel.

G. N. Shaw, being sworn by me, the undersigned officer, said on oath that he is the City Clerk and Director of Finance of The City of Coral Gables, Florida; that he has read the foregoing petition, and that the statements contained therein are true.

(S.) G. N. SHAW.

Sworn to and subscribed before me, this 25th day of January, 1941.

(S.) EILEEN E. GRAHAM,
Notary Public, State of Florida at Large.

My commission expires: 9/3/42.

222 EXHIBIT "A".

In the District Court of the United States in and for the Southern District of Florida, Miami Division.

In the Matter of
The City of Coral Gables, Florida.
In Bankruptcy—No. 1867.

To: George Robson,
c/o Robson, Link & Co., Creditor of Said City,
Ingraham Bldg.,
Address: Miami, Florida.

You are hereby required under authority of Rule 37 of the Federal Bankruptcy Act of June 22, 1938, as amended January 16, 1939 and pursuant to Rule 33 of the rules of civil procedure of the District Courts of the United States, and other rules duly and legally applicable thereto, to answer the interrogatories herewith served on you, and file by mail or otherwise the original of said answer, Under Oath, with the Clerk of the United States District Court, Miami, Florida, under Case No. 1867 M. within fifteen (15) days after the delivery to you of these interrogatories, and to serve, by mail or otherwise, a copy of the answers on the attorneys for the interrogating party within the same fifteen (15) days as required under and by virtue of the said Rule 37, general orders in bankruptcy, as amended on January 16, 1939, and in and by Rule 33 of the rules of civil procedure in the District Courts of The United States, wherein provision is made that failure to answer such interrogatories shall be deemed contempt of Court. The interrogatories and the name and address of the attorney on whom the copy of the answers, under oath, should be served, is hereto attached:

223 INTERROGATORIES.

In the District Court of the United States in and for the Southern District of Florida, Miami Division.

In the Matter of
The City of Coral Gables, Florida.
In Bankruptcy—No. 1867.

1. State your name and address and the amount of Coral Gables securities now held by you, giving

(a) Amount of refunding bonds;

(b) Amount of tax participation certificates.

2. Does any other person have any interest, legal or equitable, in the above named securities? If so, state the name and address of such person and its interest.

3. If it should be made to appear that the City of Coral Gables has or can obtain prior to the termination of these bankruptcy proceedings sufficient funds to discharge all of its matured and unrefunded indebtedness (about five (5) per cent of its outstanding unrefunded indebtedness) other than the Refunding Bonds "Issue of January 1, 1937" and Tax Participation Certificates, thereby taking the City out of default on all of its outstanding indebtedness, and after obtaining these funds that

(a) The millage would not be increased over that of the year 1940-41;

(b) You would not be compelled to deposit your securities with the Court, as required by the General Orders in Bankruptcy and the Bankruptcy Act;

(c) The costs of such procedure would not be assessed against you, and your rights would not be changed;

(d) The rate of interest on the bonds issued to obtain funds sufficient to relieve the default would be less than the average rate of interest on the Refunding Bonds "Issue of January 1, 1937";

would you have any objection to such a course of procedure on the part of the City of Coral Gables?

Note: If your answer to the above question is in the negative, the remaining interrogatories are hereby waived; otherwise, all questions must be answered.

4. If you do have any objection to that course of procedure by the City of Coral Gables, state in detail what your legal objections would be.

5. If the City had told you at the time your acceptance and proof of claim was solicited in these proceedings that

(a) your Bonds would have to be deposited with the Court prior to the allowance of your proof of claim;

(b) the costs and expenses in the proceedings, as set out in the act, can be assessed against the parties as may be just at the discretion of the Court;

(c) should an appeal be taken to the allowance of your claim by some other creditor and a decision be rendered against its allowance, the costs of the appeal, including the printing of the record, would be rendered against you Would you have then agreed to your name being used in these proceedings?

6. State whether or not you received from the City of Coral Gables a prepared and filled in printed proof of claim and acceptance of plan for filing in this proceeding.

7. State whether or not the amount of your claim had been inserted by it prior to the time that you received the same.

8. State whether or not the City or Coral Gables solicited your proof of claim and acceptance of the plan in this proceeding?

9. If your claim had not been solicited, would you have filed it in this proceeding?

10. When did you acquire the securities on which you have filed the consent in this proceeding?

11. Do you now own the above mentioned securities?

12. Does any other person or corporation have any interest in the securities on which you have filed a claim?

13. Did you acquire the securities on which you have filed a claim by

(a) Actual exchange by you of refunding bonds with the City of Coral Gables, Florida;

(b) Purchase; or

(c) If acquired by purchase state

(1) Price paid;

(2) From whom purchased; and

(3) Date of Purchase.

14. Have you read the provisions of the plan of composition now before this Court?

15. Do you know the provisions of that plan of composition?

16. Give the approximate date when you first learned that the present proceeding was to be instituted in this Court.

17. State in detail who solicited your name as a consenting creditor to this proceeding and the circumstances surrounding such solicitation.

18. Was your consent solicited by letter or by personal interview?

19. If your consent was solicited by personal interview, state

(a) Who asked for your consent;

(b) What statements and promises, if any, were made to you that your rights would not be changed, and state whether you were promised

(1) That your rights would not be changed by this proceeding;

(2) That the results of this proceeding would apply only to the unrefunded bonds;

(3) That you would not have to surrender possession of your bonds and/or tax participation certificates to the Court;

(4) That you would not have to pay any part of the costs of this proceeding;

(5) That the purpose of this proceeding was to force the holders of unrefunded securities to take refunding bonds.

20. Please note the letter (Exhibit No. 1) attached to this set of interrogatories, and in particular that letter under date of February 24, 1940 written by the City of Coral Gables, and state

(a) Whether or not you received such a letter from the City of Coral Gables; and

(b) Whether or not it was due to the representations made by the City of Coral Cables to you in that letter that you filed this consent.

21. Also, note the paper attached to these interrogatories marked "Exhibit No. 2", and note the last paragraph thereof, reading as follows:

"4. With the understanding that there will be no obligation on my part for the expense of the proceedings, and no other financial obligation of any nature, and that it will not be necessary to surrender possession of my bonds and tax participation certificates of the issue of January 1, 1937, I assent to the filing of Municipal Bankruptcy proceedings by The City of Coral Gables as the necessary means of completing the refunding, and will sign formal consent thereto when sent to me by the City."

State if the conditions set forth in that paragraph were the only conditions that induced you to file your claim and acceptance of plan in this proceeding? If not, what others?

22. If not, state what other inducements or representations influenced you to participate in this proceeding.

23. Has any person other than the City of Coral Gables asked you to file your claim and acceptance to plan in this proceeding?

24. If so, state who and when.

25. Do you have any interest in this proceeding other than the lending of your name to the City as a consenting creditor? If so, state completely and exactly.

26. The Municipal Bankruptcy Act makes provision under 11 U. S. C. A. 403 (b) that the Court may allow the actual and necessary expenses incurred in connection with the proceeding, whether such work may have been done by the Petitioner, or by committees, or by other representatives of creditors, and may allow reasonable compensation for the attorneys and agents of the foregoing and "may apportion the amounts so determined among the parties to the proceeding as may be just". Was it your understanding at the time you filed your consent to this proceeding that you might have to pay any such part of the costs and fees, if the Court should make such as assessment against you? If this was not your understanding, what did you understand?

27. If you have the alternative, prior to your claim being allowed of

(a) Sending your securities to the Court and there deposited. according to the provisions of the General Orders in Bankruptcy and the Municipal Bankruptcy Act; or

(b) Having your claim withdrawn from this proceeding;

which would you do?

28. Has the City of Coral Gables ever defaulted in payment to you of interest on the bonds now held by you?

29. State exactly how much money was paid to you in dollars and cents at the time you exchanged your bonds with the City of Coral Gables, Florida.

30. Do you have any interest in the outcome of this proceeding if the securities now held by you are not to be changed by the consummation of this bankruptcy proceeding?

31. If it should appear that the City of Coral Gables is completely able to meet its indebtedness, defaulted and otherwise, as it matures, by the sale of a new issue of bonds, and that a firm offer has been or will be made to the City to purchase such issue of bonds, would you then insist on the continuation of this proceeding?

32. At the time you filed your proof of claim, did you know that you were "consenting" to the plan of composition filed in this Court, or was it your impression that you were merely filing a claim in the proceeding?

33. Are you willing, as a condition precedent to the allowance of your proof of claim, that you send your bonds to the United States District Court, and there await the final determination of the matter?

34. Have you employed an attorney to represent you in this proceeding? If so, state his name and address.

AMERICAN NATIONAL BANK OF NASHVILLE, TENNESSEE,
By BASS, BERRY & SIMS,
American Trust Building,
Nashville, Tennessee.

WYLIE AND WARREN,
Hall Building,
St. Petersburg, Florida.

(S.) STUART B. WARREN.

Copies of answers must be mailed to Wylie and Warren, Hall Building, St. Petersburg, Florida, within fifteen (15) days from date of receipt.

229 (EXHIBIT No. 1.)

City of Coral Gables, Florida.
(Seal)

February 24, 1940

City Commission
Paul D. McGarry, Mayor
P. J. O'Shaughnessy, Vice-Mayor
W. Keith Phillips
Hollis Rinehart, Jr.
Joe Whitley

G. N. Shaw
City Clerk
Director of Finance

Dear Sir:

As the holder of bonds or tax participation certificates of The City of Coral Gables, we wish to report to you the

present condition of the refunding, and to ask your support in bringing it to a final conclusion. You and others representing 94.18% of the City's obligations consented to the refunding, and exchanged your bonds for the new refunding securities. The holders of 1.84% of the obligations sued and reduced their claims to judgments while the refunding was in progress. The holders of the remaining 3.98% ($326,000 of bonds) have not seen fit to cooperate, in fact, the holder of $252,000 of these bonds has announced his intention to attempt to recover full principal and accrued interest. In December, 1939, that creditor filed suit on approximately $95,000 of his interest coupons, attempting to secure payment out of money which had been levied and was being held for the payment of interest on the refunding bonds, including yours. Fortunately, the suit was not filed sufficiently early in interfere with the interest payment on January 1, 1940.

The City Commission is not willing to grant to these few nonconsenting creditors a better settlement than that which you accepted. Negotiations with these "hold-outs" having failed, to complete the refunding the City is compelled to avail itself of the Municipal Bankruptcy Act.

Municipal Bankruptcy proceedings Can Not and Will Not change the terms of the refunding bonds or tax participation certificates which you hold. The results will apply Only To The Unrefunded Bonds. But, the proceedings will protect the payments on your securities, by making impossible excessive levies for the nonconsenting bonds. There is no doubt of the City's ability to meet the requirements of the refunding securities, unless such excessive taxes forced upon us by the unrefunded bonds adversely affect tax collections.

Since the Municipal Bankruptcy Act expires on June 30, 1940, all haste must be made in preparing and filing the petition, and to this end we ask that you immediately fill in, execute, and return in the pre-addressed postal permit

envelope, the enclosed preliminary consent and statement upon which the City will prepare and send to you for execution the final consent, which will be necessary to enable the City to initiate and support the proceedings. This consent will not obligate you financially in any way, and is merely a ratification of your acceptance of the refunding plan. All expense of the proceedings will be borne by the City. If you have disposed of the refunding securities, please advise us to whom or through whom they were sold, in order that we contact the present holder.

Very truly yours,
THE CITY OF CORAL GABLES.

Enclosures:

1. Preliminary Consent and Data Form.

2. Instruction sheet.

3. Return envelope.

230 (EXHIBIT No. 2.)

Statement of City of Coral Gables Refunding Bonds and Tax Participation Certificates of the Issue of January 1, 1937, Owned by the Undersigned as of:

..... 19...

Name and address of owner: .....

1. I still hold the refunding bonds and tax participation certificates of the issue of January 1, 1937, ... issued to me in exchange for my holdings of bonds of previous issues:

2. I have purchased and now hold additional bonds or tax participation certificates of the issue of January 1, 1937, as follows:

Bond Numbers	Aggregate Principal Amount
	$.....
Tax Participation Certificate Numbers	
	$.....

3. Of the bonds and tax participation certificates issued to me in the exchange, I have since sold those described as follows:

Bond Numbers	Aggregate Principal Amount
	$.....
Tax Participation Certificate Numbers	
	$.....

Sold to: (Name) .....
(Address) .....

[If name of purchaser is not known, give broker's name and address]

4. With the understanding that there will be no obligation on my part for the expense of the proceedings, and no other financial obligation of any nature, and that it will not be necessary to surrender possession of my bonds and tax participation certificates of the issue of January 1, 1937, I assent to the filing of Municipal Bankruptcy proceedings by The City of Coral Gables as the necessary means of completing the refunding, and will sign formal consent thereto when sent to me by the City.

Signed .....

231 ANSWERS TO INTERROGATORIES.

In the District Court of the United States in and for the Southern District of Florida, Miami Division.

In the Matter of
The City of Coral Gables, Florida.
In Bankruptcy—No. 1867.

State of .....
County of .....
Personally appeared before me, an officer authorized to take acknowledgments, ..., who by me being duly sworn, deposes and says:

Answers to Interrogatories:

.....
Deponent.

Subscribed and sworn to before me this .... day of ....., A. D. 1941.

.....
(N. P. Seal) Notary Public.

My commission expires .....

233 ANSWERS TO INTERROGATORIES.

In the District Court of the United States in and for the Southern District of Florida, Miami Division.

In the Matter of
The City of Coral Gables, Florida.
In Bankruptcy—No. 1867.

State of .....
County of .....
Personally appeared before me, an officer authorized to take acknowledgments, ..., who by me being duly sworn, deposes and says:

Answers to Interrogatories:

.....
Deponent.

Subscribed and sworn to before me this .... day of ....., A. D. 1941.

.....
(N. P. Seal) Notary Public.

My commission expires.....

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235 On January 25, 1941 Stay Order was filed in words and figures as follows, to-wit:

STAY ORDER.

(Caption Omitted.)

The petition of The City of Coral Gables for a stay order authorizing the creditors of said city not to answer the in-

terrogatories propounded, in the name of the American National Bank of Nashville, Tennessee, to the creditors of said city, coming on this day to be heard and it appearing that said motion should be granted, and the Court being fully advised in the premises;

It Is Ordered, Adjudged, And Decreed that the creditors of The City of Coral Gables are hereby authorized not to answer said interrogatories unless later directed to do so by order of this Court.

It Is Further Ordered that if the American National Bank of Nashville, Tennessee, or its attorneys in this case, desire that this order be vacated, let them show cause, if any they can, why it should be vacated, before me on the 4th day of February, 1941, at 11:00 A. M., at my office in the County Court House in Fort Pierce, Florida. The City of Coral Gables is authorized to mail a copy of this order to all its creditors so that they may be fully advised.

Done And Ordered at Miami, Florida, this 25th day of January, 1941.

(S.) JOHN W. HOLLAND,
Judge.

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236 On December 12, 1940 Proof of Claim and Consent of Joseph W. McCarthy, was filed in words and figures as follows:

PROOF OF CLAIM AND CONSENT.

(Title Omitted.)

In Proceedings for Composition of Debts under Sections 81, 82, 83 and 84 of Chapter IX, of the Acts of Congress relating to Bankruptcy.

1. At Chicago in the County of Cook, State of Illinois, on the sixth day of September, A. D. 1940, came Joseph W. McCarthy and made oath and said:

2. I am the claimant herein, and the facts stated herein are true.

3. The City of Coral Gables, Florida, is justly indebted to the claimant as the owner and holder of the following Refunding Bonds and Tax Participation Certificates issued by The City of Coral Gables, Florida:

Refunding Bonds of the Issue of January 1, 1937, First Series

Numbers			Aggregate Principal Amount
D-2292	D-2293	D-2294	
D-3517	D-3518	D-3519	
D-3520	D-3521	D-3522	
D-3523	D-3524	D-4002	$6000.00

Tax Participation Certificates of the Issue of January 1, 1937, First Series.

Numbers	Aggregate Original Principal Amount
None	

4. Claimant hereby approves and accepts as the Plan of Composition of the indebtedness of The City of Coral Gables, Florida, the terms and conditions of the Refunding Bonds and Tax participation Certificates of the Issues of January 1, 1937, as set forth in Ordinance No. 269 and Ordinance No. 289, which latter Ordinance relates solely to Second Series Bonds with number prefix "SB" and Second Series Tax Participation Certificates with number "SC," and Ordinance No. 347 readopting said Ordinances as a Plan of Composition, which Ordinances, we are advised, are incorporated in and the basis of the petition heretofore filed by The City of Coral Gables in the above named cause.

JOSEPH W. McCARTHY,
Individual Claimant.

(Seal)

Acknowledged and subscribed and sworn to before me this 6th day of September, A. D. 1940 by the person executing the above Proof of Claim, who is personally known to this officer.

LILLIAN STEIN,
Notary Public, in and for Chicago, Illinois.

(N. S.)

My commission expires; July 8, 1943.

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238 On January 30, 1941 Answers to Interrogatories were filed by Joseph W. McCarthy in words and figures as follows, to-wit:

ANSWERS TO INTERROGATORIES.

(Caption Omitted.)

State of Illinois,
County of Cook.

Personally appeared before me, an officer authorized to take acknowledgments, Joseph W. McCarthy, who by me being duly sworn, deposes and says:

Answers to Interrogatories:

1. (a) None.

1. (b) None.

2. No.

3. If I were a holder, no.

JOSEPH W. McCARTHY,
Deponent.

Subscribed and sworn to before me this 27th day of January, A. D. 1941.

HENRY G. WALLENIUS,
(N. P. Seal) Notary Public.

My commission expires March 7th, 1943.

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239 On July 24, 1940 Proof of Claim and Consent of Joseph A. Schantz was filed in words and figures as follows, to-wit:

PROOF OF CLAIM AND CONSENT.

(Title Omitted.)

In the Proceedings for Composition of Debts under Sections 81, 82, 83 and 84 of Chapter IX, of the Acts of Congress Relating to Bankruptcy.

1. At Rochester, in the County of Monroe, State of New York, on the 8th day of July, A. D. 1940, came Joseph A. Schantz and made oath and said:

2. I am the claimant herein, and the facts stated herein are true.

3. The City of Coral Gables, Florida, is justly indebted to the claimant as the owner and holder of the following Refunding Bonds and Tax Participation Certificates issued by the City of Coral Gables, Florida:

Refunding Bonds of the Issue of January 1, 1937, First Series.

Numbers	Aggregate Principal Amount
D 107/156	$25,000.00

Tax Participation Certificates of the Issue of January 1, 1937, First Series.

Numbers	Aggregate Original Principal Amount
TPC 176/267	$46,000.00

4. Claimant hereby approves and accepts as the Plan of Composition of the indebtedness of The City of Coral Gables, Florida, the terms and conditions of the Refunding Bonds and Tax Participation Certificates of the Issues of January 1, 1937, as set forth in Ordinance No. 269 and Ordinance No. 289, which latter Ordinance relates solely to Second Series Bonds with number prefix "SB" and Second Series Tax Participation Certificates with number "SC", and Ordinance No. 347 readopting said Ordinances as a Plan of Composition, which Ordinances, we are advised, are incorporated in and the basis of the petition heretofore filed by The City of Coral Gables in the above named cause.

JOSEPH A. SCHANTZ,
(Seal) Individual Claimant.

Acknowledged and subscribed and sworn to before me this 8th day of July, 1940 by the person executing the above Proof of Claim, who is personally known to this officer.

JOSEPH M. SCHANTZ,
(N. S.) Notary Public, in and for Monroe County, N. Y. State.

My commission expires: 3/31/42.

241 On January 31, 1941 Answers to Interrogatories were filed by Joseph A. Schantz in words and figures as follows, to-wit:

ANSWERS TO INTERROGATORIES.

(Caption Omitted.)

State of New York,
County of Monroe.

Personally appeared before me, an officer authorized to take acknowledgments, Joseph A. Schantz, who by me being duly sworn, deposes and says:

Answers to Interrogatories:

1. Joseph A. Schantz, 247 St. Paul St., Rochester, N. Y.

(a) The amount of refunding bonds I now hold is $25,000.00

(b) The amount of Tax Participation Cert. I now hold is 50 certificates.

2. No other person has any interest in the above named securities.

3. I have no objection to the procedure set forth in question #3.

JOSEPH A. SCHANTZ,
Deponent.

Subscribed and sworn to before me this 28th day of January, A. D. 1941.

JOSEPH M. SCHANTZ,
(N. P. Seal) Notary Public.

My commission expires 3/1/42.

242 On July 24, 1940, Proof of Claim and Consent of David L. S. and Mercer T. Brewster, was filed in words and figures as follows, to-wit:

PROOF OF CLAIM AND CONSENT.

(Title Omitted.)

In Proceedings for Composition of Debts under Sections 81, 82, 83 and 84 of Chapter IX, of the Acts of Congress Relating to Bankruptcy.

1. At Quantico, in the County of Prince William, State of Virginia, on the 8th day of July, A. D. 1940, came David L. S. Brewster and made oath and said:

2. I am the claimant herein, and the facts stated herein are true.

3. The City of Coral Gables, Florida, is justly indebted to the claimant as the owner and holder of the following Refunding Bonds and Tax Participation Certificates issued by The City of Coral Gables, Florida:

Refunding Bonds of the Issue of January, 1937, First Series.

Numbers	Aggregate Principal Amount
D 6092/3	$1,000.00

Tax Participation Certificates of the Issue of January 1, 1937, First Series.

Numbers	Aggregate Original Principal Amount
TPC 12349/51; 14552	$1,519.00

4. Claimant hereby approves and accepts as the Plan of Composition of the indebtedness of The City of Coral Gables, Florida, the terms and conditions of the Refunding Bonds and Tax Participation Certificates of the Issues of January 1, 1937, as set forth in Ordinance No. 289 and Ordinance No. 289, which latter ordinance relates solely to Second Series Bonds with number prefix "SB" and Second Series Tax Participation Certificates with number "SC", and Ordinance No. 347 readopting said Ordinances as a Plan of Composition, which Ordinances, we are advised, are incorporated in and the basis of the petition heretofore filed by The City of Coral Gables in the above named cause.

DAVID L. S. BREWSTER,
Individual Claimant, David L. S. & Mercer T. Brewster.

(Seal)

Acknowledged and subscribed and sworn to before me this 8th day of July, 1940 by the person executing the above Proof of Claim, who is personally known to this officer.

ELIZABETH E. CZAPP,
Notary Public in and for County of Price William, Virginia.

(N. S.)

My commission expires: 12-13-42.

On February 8, 1941 Rerponse to Interrogatories by D. L. S. Brewster was filed in words and figures as follows, to-wit:

244 United States Marine Corps.

Headquarters, First Marine Division, Fleet Marine Force,
Naval Station, Guantanamo Bay, Cuba.

Clerk of the United States District Court,
Miami, Florida.

Sir:

In response to notification of Bankruptcy proceedings, No. 1867 in the matter of the City of Coral Gables before your Court, the following responses are submitted:

Interrogatories:

1. David L. S. Brewster, Colonel, U. S. Marine Corps, Holdings: $2519.00

(a) Ref. Bonds: $1000.00; 1/1/37—2½—5% due 7/1/77

(b) Tax Part. Cert.: $1519.00 Issue of 1/1/37

2. No.

3. (d) No.

Very truly yours,
(S.) D. L. S. BREWSTER,
(D. L. S. Brewster)
Colonel, U. S. Marine Corps.

On February 4, 1941 American National Bank of Nashville filed answer to petition for restraining order and return to rule to show cause in words and figures as follows, to-wit:

245 (Title Omitted.)

Comes now American National Bank of Nashville, Tennessee, by its undersigned counsel, and for Answer to the Petition for Stay Order and for Return to the Rule to Show Cause, heretofore entered on the 25th day of January, A. D. 1941, says:

1. Answering paragraph 1, admits that the cause became at issue and was referred to the Hon. F. M. Hudson, as Master and that the taking of testimony commenced on January 20, 1941 and that the matter was adjourned until March 3, 1941.

2. Answering paragraph 2, admits filing of a Motion requiring all creditors who had filed proofs of claim to file their original securities in Court. Admits that the Master heard the Motion on January 21, 1941, but says that the Master denied it for the time being, but it was not a final denial of the Motion.

3. Answering paragraph 3, admits those matters and things contained in paragraph 3 not herewith denied and says that the American National Bank of Nashville, Tennessee is a creditor of the City of Coral Gables and further says that the Petitioner, City of Coral Gables, was not entitled to notice of the sending of the interrogatories, for the reason that the objecting creditors had filed objections to the claims of all those creditors to whom interrogatories were sent and that the issues raised in the pleadings and in the objections to the claims of

consenting creditors, were issues which were between those creditors and this objecting creditor and not between the City and this objecting creditor. That this amounted to an adversary hearing between these parties and a controversy arising in bankruptcy between creditors. That no notice was given to the City by reason of the foregoing and no Order of Court was obtained permitting the issuance of interrogatories, because under Rule 33 of the Rules of Civil Procedure, (which rules were made applicable in bankruptcy by General Order in Bankruptcy #37), any party may serve upon an adversary party, or a party to the cause, written interrogatories without obtaining any order of Court at any stage of the proceeding prior to the final determination of the matter in controversy. That the very provisions of the Municipal Bankruptcy Act itself makes all creditors parties to the proceeding.

4. Answering paragraph 4, denies the matters and things contained therein and re-states and re-avers the allegations properly applicable contained in the answer to the foregoing paragraph 3.

5. Answering paragraph 5, denies the matters and things contained therein and restates and re-avers the allegations properly applicable, contained in the answer to the foregoing paragraph 3.

6. Denies the matters and things contained in paragraph 6 and says that the interrogatories were pertinent to the issues involved, as reference to the said interrogatories will manifestly show. The said interrogatories did seek to present the true situation existing and do not appear to be designed to create prejudice in the minds of the consenting creditors and seek to ascertain the method and manner used in inducing these creditors to file their consents.

7. Answering paragraph 7 of the said Petition for Stay, denies that the issuance of interrogatories was not a bona fide attempt to secure information pertaining to the cause and says that it was an open and bona fide attempt to find out whether the creditors were still the owners of the evidences of indebtedness set forth in their Proofs of Claim or Consents. That these interrogatories sought to ascertain the motives which actuated the creditors when they forwarded their consents to the filing of the Petition and to the Plan of Composition. The interrogatories further sought to ascertain what representations had been made by the City to obtain these consents; whether there was any mala fides in the solicitions of consents by the City. What representations were made by the City as an inducement to the filing of consents. Denies that this Respondent attempted to create a false impression of the penalty for failure to answer the interrogatories and says that the form used in making the explanation of the interrogatories was the same general form as was used in interrogating creditors in the case of the Eau Gallie Bankruptcy and that under the general rules, a failure to obey and comply with the rules and answer the interrogatories prescribed by those rules, may be cause for a citation for contempt and that under these rules, parties to a cause may, by contempt order, be required to answer interrogatories which they have previously failed to answer.

Further answering paragraph 7, denies that counsel sought to cloak themselves with the authority of the Court in a manner not provided for under the law and the rules of practice.

8. Answering paragraph 8, admits the allegations contained therein wherein it is alleged that the bank is a creditor of the City and that it has refused to accept the

refunding plan and that it is trying to collect its claim to the extent of the solemn promise of the City to pay, contained in its evidences of indebtedness.

Further answering the said paragraph, says that the payment of this creditor's evidences of indebtedness in full would not be to the detriment of the other creditors, for their bonds and tax participation certificates are shown by the face of the Petition itself and by the consents signed by the consenting creditors that their interests are not to be affected in any way, whether the plan of composition proposed is put in force or not. That the consents of these creditors, filed in the cause, show that one of the inducements held out to these consenting creditors by the City soliciting consents, was that their interests were not to be affected by the proceeding and thus, that the consents obtained and filed in this cause were not consents based upon a true conclusion that the plan was fair and equitable to all existing creditors, but was an attempt by the City to scale down existing valid indebtedness by the coercion of the consents of those whose interests were not to be affected in any way by the proceeding.

Further answering the said paragraph, says that the City of Coral Gables is well able to pay all its creditors, as their claims mature and that the City can obtain all sums necessary to meet its obligations as they mature by the issuance at this time of a new bond issue. That offers have been made to underwrite such a bond issue for the City, but the City has consistently and constantly failed and refused to consider the issuance of any further bond issue that would enable it to make a payment of its just debts from the proceedings of such a bond issue, and has consistently insisted upon repudiating a portion of its validly outstanding indebtednesses. That the filing of the Pe-

tition in Bankruptcy is a scheme and a device to avoid paying any creditors in accordance with the City's previous promise to pay and it is taking advantage of the Bankruptcy Act to further perpetrate an injustice upon this and other non-assenting creditors.

That the purpose of the interrogatories was to ascertain and show to this Court that the consents of the consenting creditors were obtained by reason of a promise of the City that their interests would not be affected in any way.

Further answering said paragraph 8, says that the voluntary plan of refunding was put into effect in October of 1937, at which time the present Municipal Bankruptcy Act was in force and effect and that the City did refuse to file under that Act, previous to the exchange of 95% of its then outstanding indebtedness, and that by such refusal, the City of Coral Gables did elect not to come within the provisions of the Municipal Bankruptcy Act.

Wherefore, by reason of the foregoing matters and things, this Respondent prays the Court that it strike the Petition for Stay Order from the files and dismiss the same and dissolve the injunctive order, heretofore entered in this cause.

WYLIE & WARREN,
BASS, BERRY & SIMS,
By STUART B. WARREN,
Attorneys for American National Bank of Nashville, Tennessee.

On February 4, 1941 American National Bank of Nashville filed motion to dissolve injunction, in words and figures as follows, to-wit:

250 MOTION TO DISSOLVE INJUNCTION.

(Title Omitted.)

Comes now American National Bank of Nashville, Tennessee, by its undersigned counsel, and moves to strike Petition for Restraining Order from the files and to dismiss the same and to set aside and dissolve the injunction order heretofore entered on the 25th day of January, A. D. 1941, and as grounds for said Motion, says:

1. That the Petition does not set forth sufficient matters and things to warrant the granting of a restraining order or the continuance of the order which has been granted.

2. That the Petition is insufficient in law upon which to base a restraining order.

3. That the issuance of interrogatories to parties to a cause, is provided for by Rule 33 of the Rules of Civil Procedure and the Rules of Civil Procedure have been made applicable to this proceeding by General Order in Bankruptcy #37, as amended January 16, 1939.

4. That the rules governing the issuance of interrogatories under Rule 33 to a party in interest, does not prescribe an order of Court as a necessary condition precedent to their issuance.

5. That the Municipal Bankruptcy Act itself makes all creditors parties to the cause.

6. That there is no rule of practice or procedure that forbids the issuance of interrogatories after the cause is at issue.

7. That in controversies between creditors, the Bankrupt City is not entitled to notice of interrogatories.

8. That the consenting creditors and non-assenting creditors are adversary parties in these proceedings and the issuance of interrogatories under Rule 33 of the Rules of Civil Procedure is permitted without the necessity of obtaining a Court order.

9. That the interrogatories are pertaining to the issues in the cause and to the matter of whether they have obtained preferential treatment; whether they are now creditors of the City and inquire concerning the methods and motives underlying their consent to the plan of composition and the filing of the Bankruptcy Petition.

WYLIE & WARREN,
BASS, BERRY & SIMS,
By STUART B. WARREN,
Attorneys for American National Bank of Nashville, Tennessee.

On February 21, 1941 Opinion and order making restraining order of January 25, 1941 permanent, was filed in words and figures as follows, to-wit:

OPINION AND ORDER MAKING RESTRAINING ORDER OF JANUARY 25, 1941, PERMANENT.

252 (Title Omitted.)

The City of Coral Gables, Florida, filed a petition in bankruptcy for the confirmation of a plan of composition of its bonded indebtedness, which plan had been partially

executed prior to the filing of the petition. Certain dissenting creditors, among them the American National Bank of Nashville, Tennessee, filed answers and objections to the plan of composition, and objections to the proofs of claim of certain assenting creditors, who held refunding securities acquired by them in the partial execution of the plan. These assenting creditors had filed written consents to the plan of composition which are attached to the petition. While testimony was being taken on the issues made by the petition, and the answers and objections to the plan, before a special master appointed by this Court to hear the same, the American National Bank of Nashville, Tennessee, (to whose proof of claim objection had been made by the petitioner, City of Coral Gables, on the ground that said Bank did not own the coupons listed in the proof of claim, and that the coupons held by said Bank were not the obligations of the petitioner), propounded by mail 34 interrogatories to the assenting creditors, and notified them that the failure to answer the interrogatories would be contempt of Court. The interrogatories recite that they are propounded under authority of General Order No. 37 of the Federal Bankruptcy Act of June 22, 1938, as amended January 16, 1939, and pursuant to Rule 33 of the Rules of Civil Procedure for the District Courts of the United States.

Upon objection of the City of Coral Gables, this Court on January 25, 1941, issued an order authorizing the parties interrogated not to answer the interrogatories unless later directed by the Court to do so, and directing said Bank to show cause, if it so could do, why said order should be vacated.

The matter is now before the Court on the motion of the American National Bank of Nashville, Tennessee, to

vacate the said order issued January 25, 1941, and upon the return filed to the stay order, both of which were presented and filed in open Court at the time of this hearing.

I shall approach the matter from the standpoint of General Order No. 37 being fully applicable to this case. It is provided therein that the Federal Rules of Civil Procedure in bankruptcy are to be held applicable insofar as they are not inconsistent with the Act, or with the General Orders, and that they be followed as nearly as may be. For the purpose of this decision, I am regarding the Rules of Civil Procedure as being fully applicable.

Counsel for the Bank mistake or misconceive their rights under the present situation. The new Federal Rules contemplate an orderly administration of justice, and recognize all the provisions of the Constitution in regard to due process of law.

Rule 33 deals with interrogatories propounded to adverse parties. On the record there is no adversity between the American National Bank as a dissenting creditor and the assenting creditors. Their attitude toward the plan of composition proposed by the petitioner is opposite, but the adversity contemplated by Rule 33 is between the dissenting creditors and the petitioner, the City of Coral Gables. The City of Coral Gables as petitioner is represented by counsel, and interrogatories proposed under Rule 33 should be propounded to such an adverse party. The Rules dealing with depositions and discovery, Nos. 26 to 37, inclusive, provide for cross examination by adverse parties, both when the deposition is taken orally on notice, or when it is taken by interrogatories. Rule 26 does provide for the taking of the testimony of any person, whether a party or not, but

it is specifically provided that if the deposition is to be taken before an answer has been served, after jurisdiction has been obtained over any defendant, or over any property which is the subject matter of the action, that leave of Court must be had. Certainly the Court would protect the rights of all parties in granting such leave. If the deposition is to be taken after an answer is served, whether of a party or not, that adverse party so answering is entitled to notice, entitled to attend an oral examination, or to file cross interrogatories if the deposition is taken on interrogatories.

For these reasons I am of the opinion that Rule 33 under this present situation is not applicable, and that the motions filed by the American National Bank should be denied.

It is, therefore, Ordered, that the restraining order entered January 25, 1941, be made permanent.

The American National Bank, or any other dissenting creditor, however, is not deprived of its right to pursue all other methods of developing testimony as provided by the Rules as is consistent with this opinion.

Done and Ordered at Miami, Florida, this 21st day of February, 1941, in accordance with the opinion rendered from the Bench on February 4, 1941, at Fort Pierce, Florida.

JOHN W. HOLLAND,
United States District Judge.

On February 27, 1941, Affidavit of Mailing was filed in words and figures as follows, to-wit:

256 AFFIDAVIT OF MAILING.

(Title Omitted.)

G. N. Shaw, being duly sworn, deposes and says, that he is City Clerk of The City of Coral Gables, Florida, Petitioner in the above styled cause; that on the 27th day of January, A. D. 1941 at five o'clock P. M. he did mail to Frank A. Berry, Esquire, Attorney for American National Bank of Nashville, Tennessee; Wylie and Warren, Esquires, Attorneys for American National Bank of Nashville, Tennessee, J. Howard Gould, H. A. Thompson and James K. Wiley; Jennings & Watts, Esquires, Attorneys for C. J. Root; W. Terry Gibson, Esquire, Attorney for Augustus T. Ashton and Fiduciary Counsel, Inc.; Joseph P. Lea, Jr., Esquire, Attorney for Ed. C. Wright and Company; copy of Petition for Stay Order filed January 25th, 1941 and copy of Stay Order entered January 25th, 1941, enclosed in envelopes bearing the requisite amount of United States uncanceled postage stamps, and addressed to the usual post office addresses of addressees, by depositing said envelopes properly sealed, stamped and addressed as aforesaid in the United States Post Box in the City Hall in The City of Coral Gables, Florida.

G. N. SHAW.

Subscribed And Sworn to before me this 29th day of January, A. D. 1941.

FLORENCE STITH,

(N. S.) Notary Public, State of Florida at Large.

My commission expires Dec. 29, 1941.

On July 3, 1941 Interrogatories propounded by Petitioner to Ed C. Wright & Company were filed in words and figures as follows, to-wit:

INTERROGATORIES PROPOUNDED BY THE CITY OF CORAL GABLES, FLORIDA.

257 (Title Omitted.)

To: Ed. C. Wright & Company, an adverse party in the above stated cause, and to its attorney at law, Joseph P. Lea, Jr., St. Petersburg, Florida.

The interrogatories hereinafter set forth are propounded to Ed C. Wright & Company, an adverse party in the above stated case, pursuant to Rule 33 of the Federal Rules of Civil Procedure and by virtue of Rule 37 of the Federal Bankruptcy Act of June 22, 1938, as amended January 16, 1939. You are hereby notified to answer the following interrogatories in accordance with said rules, and serve your answers as provided therein.

First Interrogatory.

Do you own any bonds heretofore issued by The City of Coral Gables, Florida?

Second Interrogatory.

If your answer to the previous interrogatory is in the affirmative, then answer the following questions:

(a) What are the dates, numbers, and denominations, of said bonds owned by you?

(b) When did you purchase said bonds?

(c) From whom did you purchase said bonds?

(d) Did you pay cash or other consideration for said bonds?

(e) What cash consideration did you pay for each of said bonds?

(f) If you paid any consideration other than cash for any of said bonds, what was it?

(g) What is the description of the coupons now attached to said bonds?

(h) If you have detached any coupons from said bonds since you purchased them, what is the description of the coupons so detached?

(i) If you sold any of said coupons which you detached, when did you sell them, to whom did you sell them, and what consideration in cash or otherwise did you receive for them?

Third Interrogatory.

Have you sold any bonds issued by The City of Coral Gables which were owned by you at the time the petition in bankruptcy was filed in this case? If so, when did you sell them, to whom did you sell them, and what consideration in cash or otherwise did you receive for them?

Fourth Interrogatory.

Did you purchase any bonds of The City of Coral Gables after January 1, 1937, and sell them prior to the filing of the petition in bankruptcy in this case? If so, then answer the following questions:

(a) What are the dates, numbers, and denominations of the bonds so purchased and sold?

(b) From whom did you purchase them and what consideration in cash did you pay for the same?

(c) If you paid any consideration other than cash for any of said bonds, what was it?

(d) To whom did you sell said bonds?

(e) What cash consideration did you receive for the bonds so sold?

(g) What other consideration did you receive for the said bonds.

Under Rule 33 of the Federal Rules of Civil Procedure some officer of your company competent to testify in its behalf is required to answer said interrogatories separately and fully under oath. The answers shall be signed by the person making them and shall be served as specified in said Rule.

This 3rd day of July, 1941.

THE CITY OF CORAL GABLES, FLORIDA, by its attorneys at law:
MORTON B. ADAMS,
(Morton B. Adams)
IRA C. HAYCOCK,
(Ira C. Haycock)
REDFEARN & FERRELL,
By D. H. REDFEARN.
(D. H. Redfearn)

State of Florida,
County of Dade.

Jean Rainey, being duly sworn, says that she is employed in the office of Redfearn & Ferrell, of counsel for The City of Coral Gables, Florida, in the above cause; that, on the 3rd day of July, 1941, she mailed a true and complete copy of the above and foregoing interrogatories by enclosing the same in an envelope bearing the requisite amount of United States uncanceled stamps, which said envelope was addressed to the usual post office address of said addressee, as follows:

Joseph P. Lea, Jr.,
Attorney at Law,
St. Petersburg, Florida,

and that she duly registered said envelope at the United States Post Office at Miami, Dade County, Florida, and deposited said envelope and its contents in said post office on the day and date aforesaid.

JEAN RAINEY.

Sworn to and subscribed before me, this the 3rd day of July, 1941.

EILEEN E. GRAHAM,
Notary Public, State of Florida at Large.

(Seal)

My commission expires: 9/3/42.

On July 3, 1941 Interrogatories propounded by Petitioner to American National Bank of Nashville, Tennessee, were filed in words and figures as follows, to-wit:

INTERROGATORIES PROPOUNDED BY THE CITY OF CORAL GABLES, FLORIDA.

261 (Title Omitted.)

To: American National Bank of Nashville, Tennessee, a national banking corporation, and its attorneys at Law, Wylie & Warren, St. Petersburg, Florida, and Bass, Berry & Sims, Nashville, Tennessee.

The interrogatories hereinafter set forth are propounded to American National Bank of Nashville, Tennessee, an adverse party in the above stated case, pursuant to Rule 33 of the Federal Rules of Civil Procedure and by virtue of Rule 37 of the Federal Bankruptcy Act of June 22, 1938, as amended January 16, 1939. You are hereby notified to answer the following interrogatories in accordance with said rules, and serve your answers as provided therein.

First Interrogatory.

Do you own any bonds heretofore issued by The City of Coral Gables, Florida?

Second Interrogatory.

If your answer to the previous interrogatory is in the affirmative, then answer the following questions:

(a) What are the dates, numbers, and denominations, of said bonds owned by you?

(b) When did you purchase said bonds?

(c) From whom did you purchase said bonds?

(d) Did you pay cash or other consideration for said bonds?

(e) What cash consideration did you pay for each of said bonds?

(f) If you paid any consideration other than cash for any of said bonds, what was it?

(g) What is the description of the coupons now attached to said bonds?

(h) If you have detached any coupons from said bonds since you purchased them, what is the description of the coupons so detached?

(i) If you sold any of said coupons which you detached, when did you sell them, to whom did you sell them, and what consideration in cash or otherwise did you receive for them?

Third Interrogatory.

Have you sold any bonds issued by The City of Coral Gables which were owned by you at the time the petition in bankruptcy was filed in this case? If so, when did you sell them, to whom did you sell them, and what consideration in cash or otherwise did you receive for them?

Fourth Interrogatory.

Did you purchase any bonds of The City of Coral Gables after January 1, 1937, and sell them prior to the filing of the petition in bankruptcy in this case? If so, then answer the following questions:

(a) What are the dates, numbers, and denominations of the bonds so purchased and sold?

(b) From whom did you purchase them and what consideration in cash did you pay for the same?

(c) If you paid any consideration other than cash for any of said bonds, what was it?

(d) To whom did you sell said bonds?

(e) When did you sell them?

(f) What cash consideration did you receive for the bonds so sold?

(g) What other consideration did you receive for the said bonds.

Fifth Interrogatory.

Do you own any coupons which have been removed from bonds heretofore issued by The City of Coral Gables, Florida? If your answer is in the affirmative, then answer the following questions:

(a) From whom did you purchase said coupons?

(b) When did you purchase said coupons?

(c) What consideration in cash or otherwise did you pay for the same?

(d) If you accepted any of said coupons as a credit or part credit on any note or notes, or as payment or part payment on any note or notes, described in said note or notes in detail, showing dates, amounts, interest rate, due dates, and the name of the maker of such note or notes, and the collateral given to secure such note or notes, and specify the amount you allowed for said coupons in such transaction.

Under Rule 33 of the Federal Rules of Civil Procedure some officer of your company competent to testify in its behalf is required to answer said interrogatories separately and fully under oath. The answers shall be signed by the person making them and shall be served as specified in said Rule.

This 3rd day of July, 1941.

THE CITY OF CORAL GABLES, FLORIDA, by its attorneys at law:
MORTON B. ADAMS,
(Morton B. Adams)
IRA C. HAYCOCK,
(Ira C. Haycock)
REDFEARN & FERRELL,
By D. H. REDFEARN.
(D. H. Redfearn)

State of Florida,
County of Dade.

Jean Rainey, being duly sworn, says that she is employed in the office of Redfearn & Ferrell, of counsel for The City of Coral Gables, Florida, in the above cause;

that, on the 3rd day of July, 1941, she mailed a true and complete copy of the above and foregoing interrogatories by enclosing the same in envelopes bearing the requisite amount of United States uncanceled stamps, which said envelopes were addressed to the usual post office of said addressees, as follows:

Wylie & Warren, Attorneys at Law, St. Petersburg, Florida;

Bass, Berry & Sims, Attorneys at Law, Nashville, Tennessee;

and that she duly registered said envelopes at the United States Post Office at Miami, Dade County, Florida, and deposited said envelopes and their contents in said post office on the day and date aforesaid.

JEAN RAINEY.

Sworn to and subscribed before me, this the 3rd day of July, 1941.

EILEEN E. GRAHAM,
Notary Public, State of Florida at Large.

(Seal)

My commission expires: 9/3/42.

On July 21, 1941 Objections of Ed C. Wright & Company to Interrogatories propounded by petitioner were filed in words and figures as follows, to-wit:

OBJECTIONS TO INTERROGATORIES PROPOUNDED BY THE CITY OF CORAL GABLES, FLORIDA.

265 (Title Omitted.)

Comes Now, Ed. C. Wright & Company, by its undersigned counsel and makes this its objections to the interrogatories of the City of Coral Gables, Florida, heretofore filed herein.

Objections to First Interrogatory.

(a) The question is immaterial, irrelevant and incompetent.

(b) The record shows that all pertinent and relative information sought to be obtained is given in the sworn proof of claim heretofore filed as required by the Bankruptcy Act and order of this Court. 11 USCA, sec. 403 (b).

(c) The evidence adduced heretofore before the Court accounts for the ownership of all bonds of the City of Coral Gables except forty-nine (49) lost bonds.

Objections to Second Interrogatory.

(a) The questions are immaterial, irrelevant and incompetent.

(b) The record shows that all pertinent and relative information sought to be obtained is given in the sworn proof of claim heretofore filed in this cause.

(c) The information sought to be obtained is not within the issues raised by exceptions to the claim of Ed. C. Wright and Company.

(d) Dates, numbers and denominations of bonds owned by Ed. C. Wright and Company have heretofore been given in the sworn proofs of claim filed in this cause.

(e) The information sought to be obtained is not pertinent to any issue raised in the exceptions to the claim of Ed. C. Wright and Company.

(f) The information sought to be obtained is private information and has no relevancy to the issues involved.

(g) The information sought to be obtained to transactions involving bonds and/or coupons either before or after the date of the filing of the proofs of claim is irrelevant and immaterial.

(h) The consideration paid for claims filed by Ed. C. Wright and Company is immaterial, and irrelevant to any issue.

Objections to Third Interrogatory.

(a) The question is immaterial, irrelevant and incompetent.

(b) The record shows that all pertinent and relative information sought to be obtained is given in the sworn proof of claim heretofore filed in this cause.

(c) The information sought to be obtained is not within the issues raised in the exceptions to the claim of Ed. C. Wright and Company.

(d) The consideration received in the sale of bonds is immaterial and irrelevant.

(e) The information sought is private business information.

(f) The question is not pertinent to any issue involved.

Objection to Fourth Interrogatory.

(a) The questions are irrelevant, immaterial and incompetent.

(b) The record shows that all pertinent and relative information sought to be obtained is given in the sworn proof of claim heretofore filed in this cause.

(c) The record shows that Ed. C. Wright and Company was the owner, holder and bearer of bonds before the adoption of the purported plan of composition and it is immaterial and irrelevant in what manner or from whom Ed. C. Wright and Company obtained the bonds.

(d) The information sought to be obtained is private business information and has no relevancy to any issues raised.

(e) That from whom the bonds were purchased or the consideration paid for them is irrelevant and immaterial.

(f) That information sought to be obtained as to transactions involving bonds either before or after the filing of the proof of claim is irrelevant and immaterial.

(g) The questions are not pertinent to any issue involved.

And the said creditor makes this its further objections to each and every one of the interrogatories of the City of Coral Gables, Florida:

(a) The objecting creditors sought to have all bonds and coupons affected by the proceedings filed, or upon which consents were being passed, filed with the Court. The City objected to and resisted this procedure, which has so far been denied by the Court. By these interrogatories the City seeks the same information that would have been secured by the filing of the bonds and coupons with the Court, but seeks the information only as to objecting creditors without requiring the information as to consenting creditors.

(b) The creditors sought to be interrogated are not such adversary parties as is contemplated by Rule 33. The Court has heretofore denied the right to interrogate bondholders in this regard.

(S.) S. O. CARSON,
(S. O. Carson)
Attorney for Ed. C. Wright
and Company.

S. O. Carson,
P. O. Box 444,
St. Petersburg, Florida.

On July 17, 1941 Objections to Interrogatories propounded to American National Bank of Nashville by petitioner were filed in words and figures as follows, to-wit:

OBJECTIONS TO INTERROGATORIES PROPOUNDED BY THE CITY OF CORAL GABLES, FLORIDA.

268 (Title Omitted.)

Comes now American National Bank of Nashville, Tennessee, by its undersigned counsel and makes this its objections to the interrogatories of the City of Coral Gables, Florida, heretofore filed herein.

Objections to First Interrogatory.

(a) The question is immaterial, irrelevant and incompetent.

(b) The record shows that the American National Bank of Nashville, Tennessee does not own any bonds of the City of Coral Gables.

(c) The information sought to be obtained is not within the issues raised in the exceptions to the claim of the American National Bank of Nashville, Tennessee.

(d) The evidence adduced heretofore before the Court accounts for the ownership of all bonds of the City of Coral Gables except forty-nine (49) lost bonds, and the bank is shown not to hold any bonds.

Objections to Second Interrogatory.

(a) The question is immaterial, irrelevant and incompetent.

(b) The record shows that the American National Bank of Nashville, Tennessee does not hold any bonds of the City of Coral Gables.

(c) The information sought to be obtained is not within the issues raised in the exceptions to the claim of the American National Bank of Nashville, Tennessee.

(d) The evidence adduced heretofore before the Court accounts for the ownership of all bonds of the City of Coral Gables except forty-nine (49) lost bonds, and the bank is shown not to hold any bonds.

Objections to Subdivisions (A) to (I) of the Second Interrogatory.

(a) The questions are immaterial, irrelevant and incompetent.

(b) The record shows that the American National Bank of Nashville, Tennessee does not hold any bonds of the City of Coral Gables.

(c) The information sought to be obtained is not within the issues raised in the exceptions to the claim of the American National Bank of Nashville, Tennessee.

Objections to Subdivisions B, C, D, E, F and I of the Second Interrogatory.

(a) These questions are immaterial, and irrelevant and not within the issues raised.

(b) That from whom they were purchased or the consideration paid for the bonds is immaterial.

(c) The information sought is private business information.

Objections to Third Interrogatory.

(a) The question is immaterial, irrelevant and incompetent.

(b) The information sought to be obtained is not within the issues raised in the exceptions to the claim of the American National Bank of Nashville, Tennessee.

(c) The evidence adduced heretofore before the Court accounts for the ownership of all bonds of the City of Coral Gables except forty-nine (49) lost bonds.

(d) That information as to dealings in bonds after the bankruptcy was filed is immaterial, irrelevant and incompetent.

(e) That the consideration received in the sale of bonds is immaterial and irrelevant.

(f) That the information sought is private business information.

Objections to Fourth Interrogatory.

(a) The questions under this interrogatory are immaterial, irrelevant and incompetent.

(b) The record shows that the American National Bank of Nashville, Tennessee does not hold any bonds of the City of Coral Gables.

(c) The information sought to be obtained is not within the issues raised in the exceptions to the claim of the American National Bank of Nashville, Tennessee.

(d) The evidence adduced heretofore before the Court accounts for the ownership of all bonds of the City of Coral Gables except forty-nine (49) lost bonds, and the bank is shown not to hold any bonds.

(e) That from whom the bonds were purchased or the consideration paid for them is immaterial.

Objections to Fifth Interrogatory.

(a) That the record shows that The American National Bank of Nashville, Tennessee is the holder and bearer of the coupons upon which proof of claim was made and that under the law of Tennessee, a pledgee is the holder and bearer of coupons, or other negotiable instruments.

(b) The record shows that the bank was the holder and bearer of the coupons before the adoption of the plan of composition and it is immaterial in what manner or from whom the bank became the holder and bearer of the coupons.

(c) The questions are immaterial, irrelevant and improper.

(d) The information sought is not within the issues raised in the exceptions to the claim of the bank.

(e) The bank does not claim to be the owner of the coupons but only the holder and bearer.

(f) That the information as to when, from whom, for what consideration and in what manner the bank be-

came the holder and bearer of the coupons is immaterial and not within the issues raised.

(g) That the questions violate the bank's right of privacy.

(h) That the information sought is private business information.

BASS, BERRY & SIMS,
WYLIE & WARREN,
By STUART B. WARREN,
Attorneys for The American National Bank of Nashville, Tenn.

On July 21, 1941 American National Bank of Nashville filed supplemental objections to interrogatories in words and figures as follows, to-wit:

272 SUPPLEMENTAL OBJECTIONS TO INTERROGATORIES.

(Title Omitted.)

Comes now The American National Bank of Nashville, Tennessee, by its undersigned counsel, and objects further to all of the interrogatories of the City of Coral Gables:

1. Because the information sought could be obtained by the filing with the Court of the bonds and coupons.

2. The interrogatories are premature in that the exceptions to the proof of claim of The American National

Bank of Nashville, Tennessee have not been heard before a Special Master.

3. The American National Bank of Nashville, Tennessee is not such an adversary party as the rule contemplates.

BASS, BERRY & SIMS,
WYLIE & WARREN,
By STUART B. WARREN,
Attorneys for The American National Bank of Nashville, Tenn.

On August 5, 1941 Order was filed (Minute Book 20, p. 920) in words and figures as follows, to-wit:

273 ORDER.

(Title Omitted.)

This cause came on to be heard upon the Objections as amended of Ed. C. Wright and Company to the Interrogatories propounded to it by The City of Coral Gables, Florida, and upon the Objections as amended of the American National Bank of Nashville, Tennessee to the Interrogatories propounded to it by The City of Coral Gables, Florida, and counsel representing both parties having been heard, and the Court, by Order dated October 19, 1940, having referred this cause to F. M. Hudson as Special Master to hear all issues of law and fact in this case, and the Court being of the opinion that it would better serve the interests of all parties to refer the said Objections to the said Special Master to be passed upon

by him in the hearing of the said cause now pending before him, it is, therefore,

Ordered, Adjudged And Decreed that the aforesaid Objections as amended of Ed. C. Wright and Company to the Interrogatories propounded to it by The City of Coral Gables, Florida, and the Objections as amended of the American National Bank of Nashville, Tennessee to the Interrogatories propounded to it by The City of Coral Gables, Florida, be and they are hereby referred to F. M. Hudson as Special Master to be considered by him together with the other matters heretofore referred to him by Order in this cause dated October 19, 1940.

Done And Ordered in Chambers at Miami, Florida, this 4th day of August, A. D. 1941.

JOHN W. HOLLAND,
District Judge.

On August 5, 1941 Amendment to Objections to Interrogatories was filed by Ed. C. Wright & Company before Special Master in words and figures as follows, to-wit:

274 AMENDMENT TO OBJECTIONS TO INTERROGATORIES.

(Title Omitted.)

Comes now Ed. C. Wright & Company, by its undersigned counsel, and amends its objections to the interrogatories heretofore propounded to it by The City of Coral Gables, Florida, as follows:

1. By striking therefrom, grounds (c) and (e) of the objections to the second interrogatory, and ground (c) of the objections to the third interrogatory.

2. By adding a further ground of objection to each interrogatory, in the following words:

"No exception or objection having been submitted or made to the claim of Ed. C. Wright & Company, there is no issue or other matter in this cause to which the Answers called for by the interrogatories would be relevant."

S. O. CARSON,
JOSEPH P. LEA, JR.,
MILLER WALTON,
Attorneys for Ed. C. Wright & Company.
By MILLER WALTON,
Of Counsel.

On August 21, 1941 Answers of Ed C. Wright & Company to interrogatories propounded by City of Coral Gables, Florida, were filed before Special Master in words and figures as follows:

ANSWER OF ED. C. WRIGHT & COMPANY TO INTERROGATORIES PROPOUNDED TO IT ON BEHALF OF THE CITY OF CORAL GABLES, FLORIDA.

276 (Caption Omitted.)

Answer of Ed. C. Wright, doing business as Ed. C. Wright & Co., successor to Ed. C. Wright & Company, a corporation heretofore created and formerly existing under the Laws of the State of Florida, to Interrogatory Two (h) and Two (i) propounded to the said corporation

by the above named petitioner, as limited in scope by the ruling of the Master.

Answer to Interrogatory Two (h):
No such coupons were detached.

Answer to Interrogatory Two (i):
No such coupons were sold.

S. O. CARSON,
JOSEPH P. LEA, JR.,
MILLER WALTON,
By MILLER WALTON,
Of Counsel.

Filed August 21, 1941.

F. M. HUDSON,
Master.

State of Florida,
County of Pinellas, ss.

Personally appeared before me, Alvah C. Belcher, a Notary Public in and for said County and State, Ed. C. Wright, doing business as Ed. C. Wright and Co., under which trade name he is successor to Ed. C. Wright and Company, a corporation heretofore created and formerly existing under the laws of the State of Florida, who being duly sworn, deposes and says that he has read the foregoing Answer to Interrogatories and knows the contents thereof and that the said answers are true.

(S.) ED C. WRIGHT.

Sworn to and subscribed before me this 18th day of August, 1941.

ALVAH C. BELCHER,
(N. S.) Notary Public, Pinellas County, Florida.

My commission expires August 19, 1942.

On August 25, 1941 Answers of American National Bank of Nashville, Tennessee to Interrogatories propounded by Petitioner were filed before Special Master in words and figures as follows, to-wit:

278 ANSWER OF THE AMERICAN NATIONAL BANK OF NASHVILLE, TO INTERROGATORIES PROPOUNDED TO IT ON BEHALF OF THE CITY OF CORAL GABLES, FLORIDA.

(Title Omitted.)

Answer to First Interrogatory:
No.

Answer to Second Interrogatory:
The answer to the First Interrogatory being in the negative, Respondent is not required to make answer to the Second Interrogatory.

Answer to Third Interrogatory:
No.

Answer to Fourth Interrogatory:
No.

Answer to Fifth Interrogatory:
No, with exception of matters set out in Answer to Sixth Interrogatory.

Answer to Sixth Interrogatory:
The American National Bank of Nashville now holds as Pledgee of Ed C. Wright, doing business as Ed C. Wright & Company, the coupons set out and described in

the proof of claim heretofore filed by it and detached from bonds heretofore issued by the City of Coral Gables, Florida.

In answer to the subsections of the Sixth Interrogatory Respondent further says:

(a) The said coupons are held in pledge to secure certain indebtedness due from Ed C. Wright, doing business as Ed C. Wright & Company.

(b) The coupons were delivered to this Bank on three dates, respectively, August 22nd, 1938, August 30, 1938, and September 12, 1938, and have been held continuously since that date.

(c) A contract for the deposit of securities with this Bank was entered into on July 7th, 1938, by Ed C. Wright & Company, a corporation, which agreement was discontinued and a similar agreement was entered into with Ed C. Wright, doing business as Ed C. Wright & Company, on December 27, 1940. In addition to this Agreement a note or notes were executed by both Ed C. Wright & Company, the corporation, and Ed C. Wright, doing business as Ed C. Wright & Company, from time to time on the usual collateral form of this Bank, giving it certain rights as Pledgee.

(d) The Agreement with Ed C. Wright and Ed C. Wright & Company, in reference to the disposition of said coupons is contained in the Custodian Agreement dated December 27, 1940, and the rights given under the collateral form of note. There are no agreements, verbal or otherwise, except as stated.

(e) The American National Bank of Nashville does not represent any creditor in this proceeding other than itself, and does not represent Ed C. Wright or Ed C. Wright & Company, but is filing proof of claim in its own name as Pledgee of coupons given to secure indebtedness.

A copy of the Agreement dated July 7, 1938, is filed herewith as Exhibit 1; a copy of the Agreement dated December 27, 1940, is filed as Exhibit 2, and the face of the last note executed by Ed C. Wright is filed herewith as Exhibit 3. The reverse side of said note has notations thereon relating to other collaterals, and is therefore not copied, as not relevant to these proceedings. All notes other than the current note of Ed C. Wright & Company have been canceled and surrendered up, and this Bank cannot at this time furnish copies thereof.

The compensation which this Bank receives from Ed C. Wright & Company is $1.00 per thousand of corpus, held as Custodian, per annum, which is figured as an average of securities held, as this is fluctuating from time to time, and in addition thereto, interest is charged on said notes at current rates. Other and further than its Custodian's fee under the agreements herein filed, and ordinary interest for money borrowed, no fees or other amounts are to be received by this Bank from Ed C. Wright & Company, directly or indirectly in any way.

(f) A copy of the face of the collateral note on which the collateral of Ed C. Wright is pledged is attached as Exhibit 3.

(g) There is other collateral pledged to secure said note.

(h) This Bank declines to answer subsection (h) pursuant to the rulings of the Master in this cause heretofore entered.

(i) Pursuant to the Custodian Agreement, bonds issued by Coral Gables in the amount of $225,000.00 were delivered to The American National Bank of Nashville, on August 22, 1938, August 30, 1938, and September 12, 1938, and were re-delivered to Ed C. Wright & Co., on June 12, 1940, pursuant to instructions by him, and a deposit of other collateral. Also detached coupons of face amount of $20,065.00, which coupons were detached from bonds issued by Coral Gables, Florida, were delivered and deposited with this Bank on December 27, 1938, and pursuant to instructions were returned on May 15th, 1940, but were held as collateral security from the date of delivery until the date they were delivered up.

When the bonds to the amount of $225,000.00 were returned to Ed C. Wright & Company, all coupons maturing prior to June 15, 1940, were detached and retained by this Bank as collateral security. The face amount of said coupons is $84,282.50 and claim on these coupons has been filed by this Bank in its own right as Pledgee.

Ed C. Wright & Company entered into an Agreement for deposit of securities on July 7th, 1938, and on or about that date paid a fee of $500.00 to said Bank. Thereafter, on August 22nd, 1938, Ed C. Wright & Company borrowed the sum of $100,000.00, executing two notes of $50,000.00 each; on August 29th, said Company borrowed an additional sum of $30,000.00, executing its note therefor, and on October 17th, 1938, borrowed the additional sum of $85,000.00, executing its note therefor. Said notes were continued in force, with various credits thereon, until December 27, 1940, on which date this Bank was notified

that Ed C. Wright & Company was retiring from business, surrendering its Charter and distributing its property, and that Ed C. Wright as an individual, was entitled to all collateral then held by said Bank, subject to the Bank's lien for the indebtedness of the corporation, which Ed C. Wright agreed to personally assume. Ed C. Wright on that date executed his note for $134,740.00, the balance then due by the corporation, and on the same date executed the collateral agreement filed as an exhibit. In other words, the Bank accepted on that date, the obligation of Ed C. Wright, individually, for the balance due by the corporation, with the same securities then pledged by the corporation being repledged by said Wright as an individual, and the corporation was at that time released from all liability to said Bank.

State of Tennessee,
County of Davidson, ss.

Personally appeared before me, Mary E. Woodall, a Notary Public in and for said County and State, A. B. Stevenson, who being duly sworn, deposes and says that he is Vice President and Trust Officer of The American National Bank of Nashville, a corporation organized and existing under the laws of the United States, with principal office in Nashville, Davidson County, Tennessee, and that he has read the foregoing Answer to Interrogatories, and knows the contents thereof, and makes oath that the statements therein contained are true.

A. B. STEVENSON.

Sworn to and subscribed before me this 15th day of August 1941.

MARY E. WOODALL,
Notary Public, Davidson
County, Tennessee.

(Notary Seal)

My commission expires: Jan. 20, 1942.

WYLIE & WARREN,
BASS, BERRY & SIMS,
By F. A. BERRY,
Counsel for The American National Bank of Nashville.

284 EXHIBIT #1.

Agreement made this 7th day of July, 1938, by and between Ed C. Wright & Company, a corporation organized under the laws of Florida, with principal office at 29-- Third Street North, St. Petersburg, Florida, of the one part, hereinafter for convenience called "Company," and American National Bank of Nashville, a national banking corporation of Nashville, Tennessee, of the other part, hereinafter for convenience called "Bank,"

Witnesseth:

The Company will hereafter from time to time deposit with the Bank as Custodian, certain securities consisting of stocks, bonds, notes and other classes of valuable papers, ordinarily designated securities, which the Bank is to receive and hold as Custodian, delivering same from time to time to the Company or on its order as it may direct.

As securities are deposited the Company will furnish a list of such securities in duplicate, and the Bank shall sign one of the duplicates as evidence of its receipt of same, and return such duplicate to the Company by mail. The Company may from time to time and at any time, deposit additional securities and may from time to time, or at any time, withdraw all or any part of said securities,

having same either returned to it or delivered to third parties as it may direct. The Bank agrees to return and deliver said securities on the written order of the company as herein provided, and upon obtaining the receipt of the company or of the third party for such delivery, shall be fully discharged as to the securities so delivered, and have no further responsibility therefor. From time to time and at convenient intervals, the Bank shall render a statement to the Company in duplicate of the securities on hand, and if such list agrees with the records of the Company the duplicate shall be signed and returned to the Bank, and the receipt of same shall be a full discharge to the Bank as to all securities theretofore delivered, except those listed on the immediate list, which release shall operate from and after the date the same is signed by the Company.

The Bank shall take such further and other action in regard to said securities from time to time as the Company may request and as the Bank may agree upon, provided always the Bank is fully indemnified as to the taking of such action, and provided further that the Bank shall have no responsibility or liability as to any action taken in conformity with instructions of the Company, except for its own negligence or willful misconduct in regard thereto. The Bank shall not be obligated to take any action as to any securities without such request. The Bank may, however, without any obligation so to do, in the case of maturing obligations such as coupons, notes, etc., collect and receive payment for same, crediting the account of the Company in the Bank with the amount so collected, but without obligation so to do.

It is further contemplated that the Company will borrow sums of money hereafter from the Bank from time to time in such amount as the Bank is willing to loan, and

when such loans are made they shall be evidenced by notes payable to the Bank on its usual collateral form of notes, which collateral form shall refer to the securities then on deposit, and upon the execution and receipt of any such note by the Bank, and the crediting of the proceeds thereof to the account of the Company, all of the securities then held by the Bank as Custodian shall be pledged to the Bank for the security of such borrowing as fully as if listed in said note, and notwithstanding anything in this Agreement to the contrary. So long as any part of any indebtedness is unpaid the Bank shall not be under any obligation to deliver any security to the Company or to pay over to the Company any amounts collected on said securities, as hereinabove provided, but may apply such collection to the indebtedness of the Company.

At the request of the Company the Bank may, however, release securities from time to time, as hereinabove provided, or may collect and credit funds to the account of the Company, as hereinabove provided, without in any way waiving its right to refuse so to do, and in any one or more instances of releasing securities (which shall include exchange of securities on such terms as the Bank may agree upon) or crediting the Company with amounts collected, the Bank may do so at its option and without waiving any of its rights hereunder except as to such immediate release or credit as the case may be. Whenever the Company shall borrow money and execute a note to said bank it shall be sufficient to refer to securities held by the Bank under this Agreement and all of same shall thereupon be pledged under the terms and conditions of said collateral note, with all of the rights being vested in the Bank in reference thereto, as fully as if each securities were listed in the face of said note.

This Agreement shall continue in effect until terminated by the parties, which may be done at any time, but only upon payment of all amounts due the Bank by the Company.

The Company will from time to time furnish the Bank with the names of its officers authorized to deposit securities under this Agreement, and to order distribution of securities under this Agreement, together with specimens of the genuine signatures of such parties.

The Company agrees to pay the Bank for its services as Custodian such amount as may be agreed on from time to time, and the amount so to be paid shall be agreed to in a letter delivered by the Company to the Bank.

In Witness Whereof, the parties hereto have set their names on this 7th day of July, 1938

ED. C. WRIGHT & COMPANY,
By ED. C. WRIGHT,
President.
AMERICAN NATIONAL BANK
OF NASHVILLE,
By P. D. HOUSTON,
Chairman of the Board.

288 EXHIBIT #2.

Collateral Agreement.

Agreement made this 27th day of December, 1940, by and between Ed. C. Wright, doing business as Ed. C. Wright & Company, (not incorporated), with office at 29 Third Street North, St. Petersburg, Florida of the one part, hereinafter for convenience called "Company," and

American National Bank of Nashville, a national banking corporation of Nashville, Tennessee, of the other part, hereinafter for convenience called "Bank,"

Witnesseth:

The Company will hereafter from time to time deposit with the Bank as Custodian, certain securities consisting of stocks, bonds, notes and other classes of valuable papers, ordinarily designated securities, which the Bank is to receive and hold as Custodian, delivering same from time to time to the Company or on its order as it may direct.

As securities are deposited the Company will furnish a list of such securities in duplicate, and the Bank shall sign one of the duplicates as evidence of its receipt of same, and return such duplicate to the Company by mail. The Company may from time to time and at any time, deposit additional securities and may from time to time, or at any time, withdraw all or any part of said securities, having same either returned to it or delivered to third parties as it may direct. The Bank agrees to return and deliver said securities on the written order of the company as herein provided, and upon obtaining the receipt of the company or of the third party for such delivery, shall be fully discharged as to the securities so delivered, and have no further responsibility therefor. From time to time and at convenient intervals, the Bank shall render a statement to the Company in duplicate of the securities on hand, and if such list agrees with the records of the Company the duplicate shall be signed and returned to the Bank, and the receipt of same shall be a full discharge to the Bank as to all securities theretofore delivered, except those listed on the immediate list, which release shall operate from and after the date the same is signed by the Company.

The Bank shall take such further and other action in regard to said securities from time to time as the Company may request and as the Bank may agree upon, provided always the Bank is fully indemnified as to the taking of such action, and provided further that the Bank shall have no responsibility or liability as to any action taken in conformity with instructions of the Company, except for its own negligence or willful misconduct in regard thereto. The Bank shall not be obligated to take any action as to any securities without such request. The Bank may, however, without any obligation so to do, in the case of maturing obligations such as coupons, notes, etc., collect and receive payment for same, crediting the account of the Company in the Bank with the amount so collected, but without obligation so to do.

It is further contemplated that the Company will borrow sums of money hereafter from the Bank from time to time in such amount as the Bank is willing to loan, and when such loans are made they shall be evidenced by notes payable to the Bank on its usual collateral form of note, which collateral form shall refer to the securities then on deposit, and upon the execution and receipt of any such note by the Bank, and the crediting of the proceeds thereof to the account of the Company, all of the securities then held by the Bank as Custodian shall be pledged to the Bank for the security of such borrowing as fully as if listed in said note, and notwithstanding anything in this Agreement to the contrary. So long as any part of any indebtedness is unpaid the Bank shall not be under any obligation to deliver any security to the Company or to pay over to the Company any amounts collected on said securities, as hereinabove provided, but may apply such collection to the indebtedness of the Company.

At the request of the Company the Bank may, however, release securities from time to time, as hereinabove provided, or may collect and credit funds to the account of the Company, as hereinabove provided, without in any way waiving its right to refuse so to do, and in any one or more instances of releasing securities (which shall include exchange of securities on such terms as the Bank may agree upon) or crediting the Company with amounts collected, the Bank may do so at its option and without waiving any of its rights hereunder except as to such immediate release or credit as the case may be. Whenever the Company shall borrow money and execute a note to said bank it shall be sufficient to refer to securities held by the Bank under this Agreement and all of same shall thereupon be pledged under the terms and conditions of said collateral note, with all of the rights being vested in the Bank in reference thereto, as fully as if each securities were listed in the face of said note.

This Agreement shall continue in effect until terminated by the parties, which may be done at any time, but only upon payment of all amounts due the Bank by the Company.

The Company will from time to time furnish the Bank with the names of its officers authorized to deposit securities under this Agreement, and to order distribution of securities under this Agreement, together with specimens of the genuine signatures of such parties.

The Company agrees to pay the Bank for its services as Custodian such amount as may be agreed on from time to time, and the amount so to be paid shall be agreed to in a letter delivered by the Company to the Bank.

In Witness Whereof, we have hereunto set our hands and seals this 27th Day of December, A. D. 1940.

(Seal) .....

Doing business as Ed. C. Wright & Company (not incorporated).

THE AMERICAN NATIONAL BANK,

By .....

290 EXHIBIT #3.

$134,740.00 Nashville, Tenn., December 27, 1940.

On Demand—after date I promise to pay to the order of The American National Bank, of Nashville, Tenn. One Hundred Thirty Four Thousand Seven Hundred Forty and 00/100 Dollars, for value received, payable at The American National Bank.

The undersigned has this day pledged with the said Bank the following securities, viz:

All securities deposited with you under Custodian Agreement dated December 27, 1940.

This pledge secures all sums of money for which the undersigned may now or hereafter be liable to said American National Bank of Nashville, (hereinafter referred to as "Bank") directly, indirectly, or contingently, and as principal, surety, guarantor, assignor, indorser, or otherwise. In event any default be made at any time in the obligation of the undersigned to the Bank, then or at any time thereafter at the election of the Bank, the undersigned authorizes the Bank or its President or any Vice-President or Cashier, to sell, assign and deliver all or any

part of said securities or property, including substitutions and additions thereto, without notice to redeem, or notice of the time, place and manner of such sale, all of which is expressly waived by the undersigned. Sales may be either public or private, at the option of said Bank or its President or any Vice-President or Cashier, and the undersigned expressly agrees that the Bank may, at its option purchase all or any part of said securities or property at any public sale, and that all rights of the undersigned and all those claiming through or under the undersigned are expressly waived. Notice of public sale shall be given by three publications in some newspaper published in Nashville, Tennessee, the first appearing ten days before the sale, or notice may be given in lieu thereof, in any other manner allowed by law.

The undersigned expressly waives and releases the right of redemption of any securities or other property sold under the authority herein given. The proceeds arising from any sale or other collection in reference to pledged property shall first be applied to the expenses of such sale or collection, including attorney's fees, and next to the payment of the liabilities of the undersigned, principal and interest, whether due or not due, with the Bank or its officers having the right to select the liabilities to be paid and the overplus, if any, shall be paid to the undersigned, but proper rebate for interest on liabilities not due shall be made. The undersigned shall receive credit only for the amount available for payment of his obligations and shall remain liable for any amount not so paid. The Bank is expressly given the right to rehypothecate the securities or property pledged hereby.

The Bank shall be under no liability or obligation of any kind to any other person bound with the undersigned upon any liability secured hereby in dealing with said securities or property, or applying the proceeds thereof, or collections

therefrom, and may at its sole election deliver to the undersigned or on his order, securities or property hereby pledged, either with or without the substitution of other or additional security.

The Bank shall not be obligated to take any legal steps for collection, protection or preservation of any securities or property pledged herewith, except after written demand of the undersigned, and upon the Bank being indemnified to its satisfaction against all costs and expenses, including counsel fees.

The Bank is expressly authorized to change all or any part of said securities and property from general to special security, or from special to general security, and to apply the proceeds arising therefrom in such manner as herein authorized or permitted, and as it may elect, without any obligation in respect to any rights or equities of any other person bound directly or indirectly, upon any or all of the liabilities of the undersigned.

The undersigned expressly agrees in case of depreciation in the market value of any security or property pledged herewith or additions thereto, or substitutions therefor, to make a payment of cash on account to said Bank, or to pledge additional security so that the market value of the security shall always be at least as much as it was on the date on which the obligation, or any of them, of the undersigned was created, and if more than one obligation on different dates, then on any of such dates selected by the Bank; and if the undersigned fails to make such payment or deposit such additional security within three days after the date on which a call or notice therefor has been deposited in the Postoffice, with postage prepaid, in a sealed envelope addressed to the undersigned at his last known address in Nashville, Tennessee, or such other address as the Bank may have in its files, then and in such event,

this note and all other obligations of the undersigned herein due to said Bank, shall thereupon and without more become due and payable.

In the event this note is not paid at maturity and is placed in the hands of an attorney for collection, or in the event due to any litigation regarding this note or any of the securities pledged herewith, it is necessary for the Bank to employ an attorney to protect its rights, the undersigned and all makers, indorsers and guarantors of this note agree to pay a reasonable attorney's fee. The makers, guarantors, indorsers and all parties to this note expressly waive the necessity of demand, notice and protest of this note.

The Bank may assign, transfer, or negotiate this note, and in connection therewith, transfer all or any part of the rights to the securities and property herein pledged, to the Bank, to such assignee, or may retain all or any part of said securities and property for the security of other obligations of the undersigned to the Bank.

ED. C. WRIGHT, doing business
as ED. C. WRIGHT & CO.
(Not Incorporated.)

Due .....

Address St. Petersburg, Fla.

291 On May 8, 1942 Report of Special Master was filed in words and figures as follows, to-wit:

REPORT OF THE SPECIAL MASTER.

(Title Omitted.)

A petition for composition of debts having been filed by the City of Coral Gables, Florida, and an order having been entered by his Honor Judge John W. Holland, finding the said petition to have been properly filed, and the said cause having been referred to the undersigned F. M. Hudson, as Special Master, I now submit this, my report, as such Special Master.

The petition in Paragraphs 11, 12 and 13 sufficiently alleges defaults in payment of its obligations, its inability to make payment of its obligations and its insolvency.

Filed with the petition, as Exhibits A, B, and C, are lists of creditors who are alleged in the petition to be all of the creditors of the petitioners so far as is known.

The petition alleges in Paragraph 1 that by Ordinance No. 269, adopted December 23, 1936, a copy of which was made a part of the petition as Exhibit 1, the City of Coral Gables proposed to its creditors a Plan of Composition, a copy of which was filed with the said petition, and that on the 4th day of September, 1937, the said City enacted Ordinance 289, a copy of which was made a part of the petition as Exhibit 2, modifying the said Plan of Composition, and that on the 5th day of March, 1940, the City Commission of the said City of Coral Gables enacted Ordinance No. 347, authorizing the filing of the said petition for composition of debts.

The petition contains in Paragraphs 3 and 4 the following allegations:

"3. That in accordance with the terms and provisions of said Ordinance No. 269, as amended by Ordinance No. 289, during the month of September 1937 and subsequent thereto, The City of Coral Gables issued Refunding Bonds of the Issue of January 1, 1937 in the total principal amount of $3,954,016.98 and Tax Participation Certificates of the Issue of January 1, 1937 in the total principal amount of $6,568,751.57 and exchanged them with the owners and holders of the old bonds and debts of the petitioner in the total principal amount of $7,908,033.95 and old coupons and interest due in the total amount of $2,-614,734.60, making a total of $10,522,768.55 old debt exchanged. These exchanges were made and consummated between the petitioner and the holders of its old bonds and coupons and other debts during the period beginning in the month of September 1937 and the day of filing this petition.

"Your petitioner further shows that its total debt of all classes outstanding as of January 1, 1937, including principal, interest coupons, and other interest, was $11,-182,584.19; that your petitioner has purchased or acquired, for its sinking fund or for the use and investment of its funds other than those established by Ordinance No. 269, as amended by Ordinance No. 289, for the service and retirement of the refunding securities of January 1, 1937, $475,198.98 of the Refunding Bonds and $234,746.92 of the Tax Participation Certificates of the Issue of January 1, 1937, making a total of $709,945.90 of the refunding securities which it owns, holds or controls, or has canceled and which your petitioner has omitted from the further statements, figures and exhibits of this petition, excepting only those of the previous paragraph and in Exhibit "E", filed

herewith and by reference made a part hereof; and that the remaining $10,472,638.29 represents the January 1, 1937 value of the petitioner's present debt to others, as shown in detail in Exhibit "D", filed herewith, and by reference made a part hereof, which Exhibit "D" is an analysis of the outstanding indebtedness of The City of Coral Gables, as of the date of this petition in terms, as to value and class, of the debt existing on January 1, 1937. Of the total outstanding indebtedness in the amount of $11,182,584.19 as of January 1, 1937, $10,522,768.55 was exchanged for the refunding securities of January 1, 1937 as shown by the foregoing paragraph, and $659,815.64 remains unexchanged.

"4. The plan of composition set forth in the said ordinances is for an exchange of old bonds, other debts and interest for Refunding Bonds and Tax Participation Certificates as of the principal and interest amount of the old obligations on January 1, 1937. The Refunding Bonds are dated January 1, 1937 and mature July 1, 1977 and are authorized to be issued in the amount of one-half of the outstanding principal debt. The Refunding Bonds bear interest at the following rates: 2½ per cent. for 3 years, 3 per cent. for the next 6 years, 3½ per cent. for the next 2 years, 4 per cent. for the next 5 years, 4½ per cent. for the next 10 years, 5 per cent. thereafter to maturity, and there are specific annual requirements for the payments into the sinking fund after the tenth year, which fund is to be used periodically for retirement of bonds by purchase or by call by lot. During the first ten years of the life of the Refunding Bonds the City is obligated to buy and cancel $500,000.00 of the bonds from collections of delinquent tax liens.

"Tax Participation Certificates are dated January 1, 1937, and are authorized to be issued for the remaining half of principal debt and accrued interest to January 1,

1937. These certificates are, in effect, liquidating certificates, have no maturity, bear no interest, and are payable only from surpluses in debt service collections for these refunding issues, as hereinafter described in the following paragraph. These certificates expire regardless of unpaid balance thereon upon the payment on December 31, 1977 of all moneys in the surplus fund set aside for them as of December 15, 1977, and after this payment the City has no obligations under the certificates."

References to the petition are intended to include amendments to the petition entered by order of the Court.

The outstanding contention of the dissenting creditors is that the plan set up in the petition was vitiated by the following acts of the City of Coral Gables :

1. The issuance December 24, 1936 of a document which is denominated Plan and Agreement for Readjustment and Refunding of Principal and Interest of Outstanding Bonded and Floating Indebtedness of the City of Coral Gables, Florida, now in evidence as Defendants' Exhibit 3.

2. Engagement by contract with a committee known as the Barker Committee, the terms of which are set forth in Defendants' Exhibit 2, whereby the City agreed to readjust and refund, in accordance with Ordinance 269, all claims held by the said committee.

3. The employment of Carl L. V. Exselsen to negotiate for the acceptance by creditors of the Refunding Plan set forth in Ordinance 269 by contract set forth as Defendants' Exhibit 1.

4. An agreement with Coral Gables Development Company October 11, 1937, set forth in Defendants' Exhibit 6,

for the sale by the City of certain tax certificates, delinquent tax liens and claims, tax titles and other assets.

5. By continuing exchanges of securities after the enactment of the present municipal bankruptcy law and the addition thereto of Sub-Section J.

6. By failure to levy taxes annually as provided in Section 8 of the Plan of Composition and by assessing properties at less than their proper assessable value.

7. By dealing, during the interval between the adoption of the plan and the filing of the petition, with certain creditors and settling their claims.

8. By failing to divulge to creditors generally the acts and transactions above mentioned.

I find from the evidence the following facts:

That the Plan of Composition adopted in Ordinance 269 December 23, 1936, as amended by Ordinance 289, adopted September 4, 1937, was not completed because a small percentage of creditors did not accept the plan.

That the document of December 24, 1936, the contract with the Barker Committee and the contract with Exselsen were all steps taken in a bona fide effort to bring about the acceptance of the Plan of Composition.

That the continued exchanges of securities with certain creditors and settlements with other creditors were made in good faith in an effort to bring about the acceptance of the Plan of Composition.

That the conduct of the City's representatives was pursued in the ordinary course of business without conceal-

ment or deceit, and with no purpose to withhold information.

That the funds expended in adjustments with certain creditors were derived from proceeds of delinquent tax assets of the City covering claims representing delinquent taxes of the City and/or special assessments imposed prior to January 1, 1936 and/or Tax Certificates, Tax Deeds or other assets derived therefrom, as provided in Section 12 of the Plan of Composition, and monies other than monies in the isue of January 1, 1937 Fund, the Sinking Fund, the Tax Participation Certificate Fund or the $500,000.00 Fund provided for by Section 12 of the Plan of Composition.

That the contract with Coral Gables Development Company was entered into in good faith as the best practical means of realizing on the City's delinquent assets derived under Section 12 of the Plan of Composition.

That property valuations for assessments of taxes have been fixed by the City officials in good faith in the exercise of their best judgment.

That the requirement under Section 8 of the Plan of Composition, binding the City to levy a special tax of 6 mills per annum, has been fulfilled for the four years ending July 1, 1941 by the levy of more than 6 mills, and that the taxes collected from which levies have been, under orders of the Court, divided between two classes of creditors: (1) Those creditors who hold writs of mandamus requiring earmarked tax levies and (2) All other creditors holding refunded or unrefunded securities.

I find the law applicable to the foregoing facts to be as follows:

When the Plan of Composition was adopted December 23, 1936 and thereafter until August 16, 1937 there was no law which extended to municipalities the benefits now accorded under the Municipal Bankruptcy Act.

Since the enactment of Sub-section J, municipalities are permitted by law to carry out a partially completed plan of composition even after the lapse of years.

The petitioner was within its legal rights to postpone bankruptcy proceedings in the hope and effort to secure unanimous acceptance of its Plan of Composition.

The efforts of the City's representatives, by means of the document of December 24, 1936, the contract with the Barker Committee, the contract with Exselsen and by other means brought out in the evidence whereby they sought in good faith to carry out the City's Plan of Composition and avoid bankruptcy, did not vitiate the Plan of Composition.

Section 12 of the Plan of Composition authorizes the petitioner to use funds derived under that section of the plan to the amount of $500,000.00 for the purchase of securities, and the right to incorporate said section in the plan is impliedly recognized in the Municipal Bankruptcy Act. Section 19 of the Plan of Composition authorizes the City to use certain surplus funds for the acquisition of refunding bonds or tax participation certificates and to hold the same for its own use and benefit and to use for any valid municipal purpose the monies, if any, received by the City on account of such bonds and certificate. The right to incorporate such a provision in the Plan of Composition is impliedly recognized in the Municipal Bankruptcy Act.

The contract with the Coral Gables Development Company was made in pursuance of the provisions of Section 12 and Section 19 of the Plan of Composition and was a legitimate application of the provisions of said sections.

The rule of law which requires the petitioner to make full disclosure cannot be extended to require the affirmative disclosure of every transaction to which the petitioner may be a party or the revelation of all the minutiae of petitioner's conduct, and the disclosures made are sufficient for the purposes of this proceeding.

Errors in tax assessments made by the city officials in good faith in the exercise of their best judgment, cannot be held to vitiate the Plan of Composition, although witnesses may be of the opinion that the assessments might reasonably have been higher.

That the levies of taxes made by the City under the requirements of Section 8 of the Plan of Composition are in compliance with the said requirements.

Among the dissenting creditors who filed answers and objections are the following who hold coupons but no bonds:

American National Bank of Nashville, Tennessee

J. Howard Gould

H. A. Thompson

James K. Wiley

Albert Roberts, Jr., as Assignee of said Thompson & Wiley

It is strenuously urged that the plan is unfair and discriminatory against the American National Bank of Nashville, Tennessee because it holds coupons and no bonds, with the result that under the plan that bank will receive only participation certificates.

I find the facts to be:

That the coupons in question are the property of Ed C. Wright, doing business as Ed C. Wright & Company, and that the American National Bank holds the coupons as pledgee.

That the bank from time to time prior to June 12, 1940, held as pledgee bonds in a large amount, which were owned by Ed C. Wright; that on June 12, 1940, a few days before the petition was filed in this cause, bonds to the amount of $225,000.00 were by the bank returned to Wright and that at that time all coupons maturing prior to June 15, 1940 were detached and retained by the bank as collateral security. It thus appears that at the time of that transaction the coupons accepted and retained by the bank as pledgee were accepted after maturity.

The American National Bank was a party plaintiff in a mandamus proceeding against the City of Coral Gables, which was instituted prior to June 12, 1940, in which certain provisions of the City's Plan of Composition were brought in question, and therefore the American National Bank, as such party plaintiff, had knowledge of the existence of said Plan of Composition.

I find as a matter of law that when the American National Bank accepted, on June 12, 1940, coupons which were then past maturity, as it had the right to do, such acceptance was under circumstances which put the bank

upon inquiry and that such inquiry would have led to the discovery of the Plan of Composition under which the coupons were to be refunded by tax participation certificates only, and to the discovery of the City's Ordinance No. 347, passed March 5, 1940, authorizing the institution of bankruptcy proceedings.

That because the American National Bank is not a holder in due course of the coupons pledged to it, and because of its actual knowledge of the Plan of Composition when it surrendered bonds and accepted coupons, the said bank cannot complain of the fact that holders of bonds occupy a superior position under the Plan of Composition.

Thompson and Wiley as claimants have been eliminated by their assignments to Roberts, which were executed January 3, 1941 and filed with the Clerk of the Court January 11, 1941, during the progress of this cause.

As to Howard Gould and Albert Roberts, Jr., I find from the evidence the following facts:

Gould filed a Proof of Claim and Roberts relies, under the assignments to him, upon Proofs of Claim filed by Thompson and Wiley. These documents allege, as to both, the ownership of coupons only.

Thereafter, and after Roberts took assignments from Thompson and Wiley, he and Gould joined with Wright & Company and the American National Bank in Objections to Claims filed on behalf of certain consenting creditors.

A comparison of the Proofs of Claims filed by Gould, Thompson and Wiley with the Proof of Claim filed by Ed C. Wright & Company shows that all of Gould's coupons and all of the coupons acquired by Roberts from Wiley and

a part of the coupons acquired by Roberts from Thompson were from bonds owned by Wright & Company.

The Coupons held by Roberts were acquired by him January 3, 1941, during the progress of this cause.

Albert Roberts, Jr. testified at length (Tr. 891 et seq.) concerning his negotiations with the City, in which he appeared as a representative of Ed C. Wright & Company and American National Bank in opposition to the Plan of Composition contained in Ordinance 269 and in advocacy of a special settlement with his principals. His testimony shows that he was fully conversant with the Plan of Composition. He did not refer to his own claim set up in the Proofs of Claim by Thompson and Wiley.

J. Howard Gould appeared in the hearings before the Master by his attorney, but Albert Roberts, Jr. did not. Gould did not testify in the case and Roberts in his extended testimony did not refer to his own claim against the City as set forth in the Proofs of Claim of Thompson and Wiley. Neither of the two produced any evidence in support of the validity of his claim of a special equity as the holder of coupons only.

As to the demands of Gould and Roberts, I find the law to be as follows:

By his acquisition of coupons during the progress of this cause, with full knowledge of the Plan of Composition, Roberts was within his legal rights, but he precluded himself from asserting special equities in his favor as a holder of coupons only.

It would be fatal to any plan of composition to require the petitioner to foresee and guard against all inequalities

that might possibly arise out of the peculiar situation of individulas. Therefore when claimants in the position of Gould and Roberts seek to have the entire plan of composition set aside because of alleged hardships to them, it is incumbent upon them, and the burden is on them, to fully enlighten the Court on all points bearing upon the validity of their claim to special consideration and of the basis of their assertion of special equities. This has not been done by either Gould or Roberts. They have brought before the Court nothing except as to each of the two claims, their Proof of Claims, which are not supported by any evidence.

C. J. Root and Fiduciary Counsel, Inc., dissenting creditors, have urged special equities growing out of the fact that the City entered into an agreement with each of them whereby they each stipulated to accept a reduction of the principal and their claims and a reduction of interest and bound themselves not to proceed to the enforcement of their claims, which they were then in position to do, in consideration of which the City agreed to pay the reduced claims of the said C. J. Root and said Fiduciary Counsel, Inc., and levy a special tax therefor, and further agreed that it would not resort to bankruptcy. In the case of Fiduciary Counsel, Inc., it was agreed that, if the City should resort to bankruptcy, the claim should be restored to its status quo ante.

I find as a fact that the agreements were made as alleged.

I find as a matter of law that an agreement not to resort to bankruptcy is futile and unenforceable, but I find that in each of these two cases equity requires that the claim should be restored to its status quo ante and that each of the claimants should be allowed to participate to the same extent as if no agreement had been made and as if their

claims had been presented and allowed for the full amounts that would be payable if their claims had not been reduced in principal or interest, less any payments made by the City to said claimants, on account of their claims, prior to the filing of the petition in this cause, which payments should be credited on their claims in the statu quo ante. The decree should specifically so direct.

302 CONCLUSION.

I find that the allegations of the petition are sustained by the evidence and that the petitioner is insolvent and entitled to proceed under Chapter 9 of the Bankruptcy Act of the United States.

I find that the petitioner paid to Carl L. V. Exselsen, for his services in negotiating for acceptance of the Plan of Composition, a large compensation, which is not shown by the evidence to have been unreasonable.

Having carefully examined all the contracts, proposals, acceptances, deposit agreements, and all other papers relating to the plan, for the specific purpose, I have ascertained that no fiscal agent, attorney or other person, firm or corporation promoting the composition, or doing anything of such a nature, has been or is to be compensated, directly or indirectly, by both the petitioner and the creditors of the petitioner, or any of such creditors—either by fee, commission, or other similar payment, or by transfer or exchange of bonds or other evidence of indebtedness whereby a profit could accrue.

I, therefore, find as follows:

1. The Plan of Composition presented by the petition is fair, equitable and to the best interests of the creditors

and it does not discriminate unfairly in favor of any creditor or class of creditors.

2. The Plan of Composition complies with Chapter 9 of the Bankruptcy Act of the United States.

3. The Plan of Composition has been accepted and approved in writing by or on behalf of creditors holding more than two-thirds of the aggregate amount of claims of all classes affected by such plan and which have been admitted by the petitioner or allowed by the Court, and that claims owned, held or controlled by the petitioner have been excluded from such computation.

4. All amounts to be paid by the petitioner for services or expenses incident to the composition have been fully disclosed and are reasonable.

5. The Plan of Composition has been offered and accepted in good faith.

6. The petitioner is authorized by law to take all action necessary to be taken by it to carry out the plan of composition.

I find that C. J. Root and Fiduciary Counsel, Inc. are equitably entitled to participate under the said plan to the full amount of their respective claims as they existed before any agreement for reduction of their claims were entered into with the City, less payments made on such claims which should be credited on said claims in statu quo ante.

I recommend that a decree be entered in accordance with the foregoing findings.

I am delivering herewith to the Clerk of the Court the Court files and all documents delivered to my custody by the Clerk.

I am filing a transcript of the testimony taken in this cause, consisting of 1306 pages bound in three separate volumes, a separate transcript, consisting of 32 pages, of testimony taken on Special Issues raised by C. J. Root and Fiduciary Counsel, Inc. and a transcript of the argument of counsel, consisting of 415 pages and separately bound.

I am also delivering to the Clerk of the Court all exhibits filed before me in the said cause and all papers and documents filed by the parties before me as Master, as well as all orders signed by me in the progress of the cause.

The Court is respectfully requested to enter an order herein allowing to the Master a reasonable compensation for his services in this cause.

Respectfully submitted,
(S.) F. M. HUDSON,
Special Master.

On May 8, 1942, Transcript of Testimony before Special Master was filed in words and figures as follows, to-wit:

In the United States District Court in and for the Southern District of Florida, Miami Division.

In Bankruptcy No. 1867-M.

In the Matter of The City of Coral Gables, Florida.

This cause came on for hearing before the Honorable F. M. Hudson, as Special Master herein, pursuant to that certain Order entered in this cause by the Honorable John W. Holland, Judge of the above styled Court, on the 19th day of October, A. D. 1940, commencing at the hour of 9:30 o'clock A. M. on the 12th day of December, A. D. 1940, said hearing being held in the offices of the said Special Master, in the Seybold Building, Miami, Florida.

The following appearances were noted for the record:

Mr. Morton B. Adams, of Miami, Florida, City Attorney for the City of Coral Gables, Florida; D. H. Redfearn, of the law firm of Redfearn & Ferrell, and Ira C. Haycock, of counsel for the City of Coral Gables; George N. Shaw, City Clerk and Director of Finance for the City of Coral Gables, Florida.

Mr. W. Terry Gibson, of West Palm Beach, for Fiduciary Council, Inc., and Augustus T. Ashton.

Mr. Joseph P. Lea, Jr., of St. Petersburg, Florida, for Ed. C. Wright & Co., Inc.

Mr. F. A. Berry, for American National Bank of Nashville, Tennessee.

Mr. Stuart B. Warren, of the law firm of Wylie & Warren, of St. Petersburg, Florida, for the American National Bank of Nashville, Tennessee; for J. Howard Gould, James K. Wiley and H. A. Thompson.

Thereupon, the appearances of counsel having been noted of record, the following proceedings were had:

The Master:
Now, what are the Motions that are to come up this morning?

Mr. Warren:
We have a Motion to require an Amendment of the Petition. That is the first motion there (indicating document); the next one we have is under it, and the rest of them are in effect the same thing, for the different parties.

The Master:
Well, who has motions besides Mr. Warren?

Mr. Warren:
Mr. Berry is joining in the motion, of course.

The Master:
Are there any other motions? Who else has motions that go with those?

Mr. Lea:
I think all counsel have them; I thought they were all going to be heard today.

The Master:
That's my understanding, too, but I want to see what they are, and get them before me.

Mr. Lea:

The American National has one motion, and Ed. C. Wright also has a motion; and also several objections to claims. These gentlemen don't represent those other creditors, so we can't hear those at this time.

The Master:

All right, then, you can go ahead, Mr. Warren.

Mr. Warren:

We take this position on this Motion, if the Court please, and the City might present a clearer picture to the Court on their pleadings, and that it might possibly be disposed of on the pleadings if the Motion is granted, on a Motion to Dismiss. Now, we show that the plan was a voluntary plan of adjustment, completely executed, and we ask that they be required to incorporate in their Petition the deposit agreement which was dated December 24, 1936. We also request that the Court order that the monies paid for refunding bonds and tax participation certificates, which the petition alleged were required,—what they paid for those participation certificates and refunding bonds; what actual money was paid by the City. We feel that if this plan and agreement is incorporated in the petition, that it will show that the plan is completely executed; a plan of voluntary adjustment has been completely executed. We feel that in relation to the monies paid for the refunding bonds which were required, and for the tax participation certificates, if that is shown, that it will show that the City is not unable to meet its debts as they mature. Of course, the Motion is of no particular moment so far as the merits of the case go; we just feel that we can always put these things in as proof, but if the petition would show that the plan proposed is a voluntary plan of adjustment completely executed, and if the figures were put in, it would show that the City was not entitled to file in bankruptcy, and that on the fact of the petition it would show that the

plan was filed in bad faith. Now, I don't care to make any further argument on that.

The Master:
Well, I will hear from the other side.

Mr. Redfearn:
Mr. Warren, I think, has completely answered his motion when he said he can introduce these anyway; I think that's a complete answer to his motion.

The Master:
Is there anyone else on Mr. Warren's side that has anything to say?

Mr. Berry:
I think Mr. Warren has said all there is to say in presenting the motion.

Mr. Warren:
Of course, the Vero Beach case has been recently overruled in the Avon Park case.

Mr. Redfearn:
Yes, but on other grounds.

Mr. Warren:
Yes, more in our favor.

Mr. Redfearn:
But this wasn't touched by the Supreme Court of the United States in its recent decision; and so far as pleading our evidence is concerned, I don't know anywhere in the Bankruptcy Court or anywhere else where we have to plead our evidence, and that's admitted in his statement to you; he can introduce the things he is complaining about. And I never saw a motion before that pled facts. We

always have a response or answer to plead facts, and in his motion he has set forth all kinds of facts he wants to prove. That is to go in his response, and in fact he has it in his response, too; and the question of unconstitutionality here, that was done prior to the affirmance of the Homestead case, and he—

Mr. Warren:
I haven't argued that motion yet.

Mr. Redfearn:
It is in the same motion.

Mr. Warren:
No it isn't. I'm arguing the motion for Amendment of the Petition.

Mr. Redfearn:
That's in the motion of the American National Bank.

Mr. Haycock:
That is not in the same motion, no.

Mr. Adams:
If the Court please, I would like to call attention to this, in regard to his motion for the deposit agreement; the record shows that the agreement contract he refers to related to a voluntary plan of composition that was premised upon Ordinance No. 269, the original plan which culminated in the 1937 voluntary adjustment. That plan was upset by the decision of the Supreme Court, and a number of obligations of the City were taken out of the plan under the Supreme Court decision, so that after that decision came down on July 30, 1937, the City adopted Ordinance 289, which took out of the original plan pretty close to 150 to 200 Thousand Dollars worth of obligations, and permitted refunding bonds to refund—to refinance

those which did not have the right of taxation against homesteads exempt under the present Constitution of the State. Now, the Petition makes no allegation about this original agreement, because that agreement was upset by the Supreme Court's modification of the plan. After the modification of the plan by the adoption of Ordinance 289, under the allegations in the petition, and they are true, we then went into and made actual exchanges and refunding of the bonds under this modified plan, so that this old deposit agreement was voluntarily carried out, maybe, but that was not an enforcible agreement at that time; and we have a case of a straight refunding of a plan set up in 269 and 289, both pleaded; and then the exchange of those pleadings direct; and there was no plan which could have been completed. Now, as to the amounts paid for the refunding bonds and tax participation certificates, we don't see that that has any bearing whatever upon the ability of the City to now pay. The City, under the plan, was obligated to acquire out of the proceeds of past due delinquent taxes, a Half Million Dollars worth of bonds to be retired during the first ten years of this plan; this is an integral part of the plan of refunding for the City, that the City liquidate its past due taxes and retire a Half Million Dollars worth of bonds during the first ten years.

Mr. Lea:

Isn't that same plan you are talking about to supersede?

Mr. Adams:

No; that feature of it was not superseded; that feature went on through, as to both obligations, so that as to what was paid for these securities is not a question of the present or past solvent condition of the City.

Mr. Berry:

May I say this, on the part of that. We are attempting, and the client I represent has come into Court, and wants to understand what has gone before; the very foun-

dation of this case is, as we understand it, the good faith of the City in making the allegations of insolvency and inability to pay; they are, as we view it—this may be controversial—reaffirming or reoffering the plan that was offered in '37. Of necessity, that could not have been offered, under the present act which was not in effect at that time. Now, this deposit agreement, we think, and insist, is an integral part of that plan, defining the rights we would acquire should we exchange our bonds under that plan. It is quite true, as Mr. Adams has stated, that that plan was amended by an ordinance, but that ordinance sets out the amendment, and I do not think that a fair construction of that ordinance would strike down and destroy the deposit agreement in its entirety; it is only an amendment; it is a modification, and it leaves it there, and we think a full disclosure in good faith would require that to be presented so we would know exactly where we stand. I don't think the allegations are complete without it, and that's why we ask for it at this time. While it is factual and can be put in in another way, we do not see how there can be any objection to it on that ground.

The Master:

Is there anyone else to be heard? (No response from any counsel present.) I think the more complete that the original Petition is made, it would be the better, but I don't see that it is the province of the Master to require counsel to prepare pleadings except in their own way. All of these matters can be brought out, and undoubtedly will be brought out. It may be more cumbersome to do it that way, but that's the way the case stands, and I shall have to deny that Motion. That is the motion of the American National Bank. Now, what other motions are there presented on the same grounds?

Mr. Lea:

The motion of J. Howard Gould, H. A. Thompson and J. K. Wiley; it is a joint motion.

The Master:

The Motion of American National Bank of Nashville, Tennessee, to require an amendment of the Petition, and the joint motion of J. Howard Gould, H. A. Thompson and James K. Wiley, they are both overruled.—Now, what is the next motion?

Mr. Warren:

The next motion goes to the allegations of the Petition, that is, as to whether it was filed in good faith, and that the Town alleges insolvency on its face, and whether it is in accordance with the rules and provisions of the Municipal Bankruptcy Act.

Mr. Adams:

How is that entitled?

Mr. Warren.

It is a Motion to Dismiss.

Mr. Berry:

It has sixteen grounds in it.

The Master:

Judge Holland hasn't passed on that?

Mr. Adams:

No, sir; the reference included the matters of law raised by the motions, and the evidence.

The Master:

Is there anything else on that point?

Mr. Berry:

If the Court please, addressing myself to that motion, this strikes me as one of the important things in this case that should be passed on now. It is fixing the date at which the condition of the City of Coral Gables in insolvency is to be considered in this cause. The original pleading, or original composition, or voluntary adjustment—I'm not making the distinction now; that will be argued later; that will be argued it was a voluntary adjustment and not a composition under the Bankruptcy Act—was undertaken in 1937. It appears affirmatively from these pleadings that all but I believe approximately a Half Million Dollars was refunded.

Mr. Warren:

Yes; that's right.

Mr. Berry:

I'm using round figures because I don't think they are important for this; and that the situation that resulted after that was one which the City Commission of Coral Gables must have found satisfactory, because the various ordinances and plan was that an offer would be made creditors, and that would be declared in effect when in the opinion of the City Commission—and I may be stepping outside of the record, and if I am I wish you would call me; that may be in this deposit agreement and not specifically in the ordinances—I'm trying to confine this to the ordinances. At any rate, it was declared in effect when it was satisfactory to the Commission, but not less than 20% of those bondholders assenting. The agreement was declared in effect because more than 90% accepted; as a matter of fact, I think it was a fraction over 94% accepted. That was the situation when this bankruptcy was filed. The ordinance on which the bankruptcy is predicated alleges that certain of the bondholders who held bonds in 1937 refused to accept, which they then desig-

nated a plan of composition, although that seems to be the first time that appears on the record, this ordinance of 1940, and a very amicable settlement can be arranged, that the City owes a legal and moral duty to the bondholders who accepted, to prevent any other bondholders, non-assenting, from receiving any greater return. Now, we do not understand how that can affect the rights that the City may require when the City invokes the bankruptcy statute. The statute is perfectly plain in stating that it must be insolvent and unable to meet their indebtedness as it matures. Our construction of the bankruptcy law, and we think this is an essential part of it, is that the time for determining insolvency is the time of the filing of that Petition. Now, even if Coral Gables was insolvent and unable to pay in 1937, we object to that evidence, and we object to that as not in good faith when it is put in this petition, but the allegation must confine itself to the factual situation which existed at the time of the filing of this petition in 1940. The petition goes forward and alleges that the present tax levies are sufficient to take care of the maturities and the interest on the refunded bonds, including bonds which can be issued to refund the bonds held by those who did not assent to the 1937 proposition, if they are put back in the shape they would have been had they assented at that time. They allege further the retirement of the more than Half a Million Dollars in bonds which was in the motion a while ago, to show what they paid for them, which does not clearly appear. They allege that they have done that. There is no allegation that that amount of bonds was acquired within the brief time since this plan was put in effect, negatived by certain other proposals in the ordinance proposing refunding. Therefore, we say that the Petition shows on its face if that money had been used, it would not only have served the refunded bonds, but also the unrefunded bonds which are outstanding. There is no showing the money must be raised either by a new issue or otherwise to pay the unre-

funded bonds as they mature, and interest thereon. The allegation is that it is unfair, and creates a preference to these if that is done. We are unable to understand that, because there was no bankruptcy when the plan was declared in effect with 94%. That was a dilatory act, as shown by the petition, on the part of the Commission, and no preference arises when there is a full disclosure, and certain people agree and certain do not agree; that leaves the situation outstanding. We take the position that no matter how these bonds were acquired, they are now held as outstanding obligations of the City with legal rights attaching thereto, in the absence of fraud, and for that reason we say that the petition shows that the situation which existed in 1940 at the time of its filing was not one bringing it within the purview of the Bankruptcy Act, and for that reason it ought to be dismissed.

The Master:
Anyone else on the same side?

Mr. Warren:
Yes, sir.

Mr. Adams:
As of what date was that, in your closing remark?

Mr. Berry:
March 5th, the date of the filing of the .....

Mr. Warren:
To go into the pleadings a little bit further than Mr. Berry has done in his argument, they allege cancellation of these old bonds; they allege their inability to pay the debt as it existed in 1936 before the promulgation of the voluntary plan. They nowhere in this record allege their inability to pay their present debt as it matures, except in this way. In Paragraph 13: "Your Petitioner further

shows that the amount of the bonded and other indebtedness of your petitioner outstanding at the institution of the proposed plan of composition"—which is back in 1937—"and at this time is so great that it is impossible for your petitioner to pay the same as it matures, and that your petitioner is insolvent and unable to pay its indebtedness as the same has matured, is maturing and will mature in the future, and said petitioner desires to effect a plan for a composition of its debts as set forth in this petition." Now there, if the Court please, is an allegation which says, in effect, that if their condition is taken as of the end of 1936, that therefore they are insolvent and unable to pay their debts as they mature. Now that isn't, as we see it, a compliance with the Bankruptcy Act. The petition further shows that there has been $100,000, or that there is $100,000 past due interest outstanding, and $65,000 of bonds outstanding, and it shows a retirement during the period since 1937 of in excess of $500,000. of refunding bonds. Now, their contractual obligations were first to the old bonds, or equally to the old bonds and the refunding bonds. Now, here's something else, on which they base their premise that they have. This is the Ordinance which I am going to refer to, which authorizes the filing of the Petition in Bankruptcy, and it is taking an unjustified crack at a bondholder who bona fidely holds the bonds of the City of Coral Gables. First they recite it is only a small percentage of the holders of old bonds outstanding, and then they allege this: "Whereas Ed C. Wright and associates have declined to accept the refunding bonds and tax participation certificates and litigation has been commenced to enforce the payment, and there is no hope of amicable arrangement"—now, I want the Court to keep in mind that this is their premise and reason for going into bankruptcy—"and Whereas, it would be unfair to the holders of the refunding bonds and tax participation certificates, issue of January 1, 1937, for the City to submit to the payment of any old bonds and coupons in full, and the

City is morally and legally obligated"—and I want to emphasize that "legally", if the Court please; and continuing (thereupon reading the balance of the sentence, through the words "the only procedure available to the City is to file a Petition in Bankruptcy"). Now, they don't say in that Resolution, which is the springboard from which this Petition springs, that the City is insolvent or unable to meet its debts as they mature. It says that it would be unfair to these other bondholders. How could it be unfair to them? They have canceled out their debt. There is no legal premise for it being unfair to anybody. Now, one of the reasons that we pointed out in our formal motion to have this deposit agreement put in, they alleged that it is legally obligated. Now, nowhere in the record is there shown any legal obligation on the part of the City of Coral Gables to file a petition in bankruptcy so as to coerce and force a bondholder who has the contract rights of the City of Coral Gables, to take something less than his contract calls for. Now I submit that this is the springboard, it is the sill upon which the whole thing stands, and as I have pointed out, it is a mud-sill; they know that. Now, the rest of the petition, if the Court please, alleges facts, debts outstanding as of 1937, in the face of the petition. Now, the Bankruptcy Act is clear. Reading from Section 3-403, "Any Petitioner may file a petition hereunder that the petitioner is insolvent and unable to meet its debts as they mature".

Now, to see how that has been interpreted by the Courts, the case of Fano against Newport Heights Irrigation District, reported in the advance sheets of the Federal Reporter, second series, of October 28, 1940; it is 114 Fed. (2d), No. 3, at page 563. This was under the National Municipal Bankruptcy Act. The Court states: "The problem for solution in this case is simply one of facts, to-wit: 'at the time of the filing of the petition was the District insolvent or unable to pay its debts as they fall due, and if so, is the proposed plan fair?'" The Court then goes on

to say: * * * "It is undoubtedly true that the District has not funds in hand to fully pay this due interest and in that sense is insolvent, but it is not only far from insolvent in the bankruptcy sense but owns debt free, except for the interest mentioned, assets in value many times the indebtedness, all in most excellent physical and almost new condition. These improvements greatly enhance the value of the District's property, and of course of the security * * *. In view of the small amount of deficiency in tax payments shown by the 1937 financial statements of the District, we are unable to find why the tax rate should not have been increased sufficiently to meet the District's obligations, or why it can be said that the plan is 'equitable' and 'fair' and for the 'best interest of the creditors' with no sufficient showing that the taxing power was inadequate to raise the taxes to pay them.' "

Now we submit, if the Court please, that Coral Gables in this petition shows their taxing power is adequate, adequate to raise them; they haven't shown they were insolvent, and on the contrary, the petition shows on its face they are not only solvent and are able, and have been, to meet their debts as they mature. Now, the fact that these $100,000. of interest coupons and some $65,000. of bonds are not paid and are due, this case is the answer to that. They can increase their tax levy. They have retired bonds. The only criterion that we have as to what can be done is what has been done in the past, and they show what they have done in the past. Now, there is another thing embraced in our motion here which I desire to call to the Court's attention at this time, and that is this. They propose to give an evidence of indebtedness to the extent of 50% of the principal of their bonds. That is, to give a refunding bond. They propose to give for interest an anomalous contract known as the tax participation certificate, which carries no obligation of the City to pay, no taxing power, and only such surpluses as may accumulate over a period of years from certain sources are to be paid

to those interest holders. In other words, that is not a security, and the present market of those is around 10, of those participation—those tax participation certificates. Now, we hold coupons only as collateral. That is, the bank, and the other clients hold coupons only, without bonds, and that is unfair to these creditors. Now, I do want to emphasize that this Resolution authorizing the filing of the petition in bankruptcy bases it upon the fact that Ed. Wright won't come in, and the Bank, and that the City is legally and morally obligated to take all legal steps available to force these creditors, who have refused to come in, to take what others have voluntarily taken, That is the sole mud-sill of the whole proceeding.

The Master:
Is there anyone else on this side of the question?

Mr. Gibson:
Do I understand on this motion you are going to make a ruling about that rule of evidence, as to when the City is insolvent?

The Master:
This motion is a Motion to Dismiss.

Mr. Warren:
There is one other case that I desire to call to the Court's attention regarding that legal duty of the City to bring this proceeding. I suppose these gentlemen are familiar with this case; the case of West Palm Beach. There they absolutely agreed, the City did, in its first refunding, not to permit anyone else to receive more; there is no such agreement in any of these ordinances here in the City of Coral Gables. The Circuit Court of Appeals, when the second refunding issue was going to be issued giving more to the recalcitrant minority—

Mr. Redfearn:
Is that the case of Block, 112 Fed. (2d), 949?

Mr. Warren:
Yes. (Reading from decision:) "Nothing in the bond plan required or looked to the consent of the holders of all of the securities. On the contrary, Article 8 of the plan, styled 'conditions precedent to the obligation of the creditors to accept new bonds', conditions everything on the assent of creditors holding 60% of the bonds, and it also provided that compliance with the conditions of this section might be waived by the holders of 60% of the debt to be extended. Thus showing plainly that it was no doubt the hope, it was in no sense the condition of the plan that all bondholders should assent." That was another reason that we wanted to get that plan of composition—I mean, that plan of adjustment, or deposit agreement, I mean, in the record. Now, in the City of Coral Gables, the plan was to be put into effect when 90% of the bondholders had agreed to it, and there is no condition in there that all should agree to it—a new agreement—so there is no legal duty upon the City of Coral Gables to file a petition in bankruptcy.

Mr. Lea:
I am not arguing the point, but I would like to explain the facts of that West Palm Beach case to the Court. That was a case that was filed under Sub-section K in the first instance, and then it was dismissed.

Mr. Haycock:
That was in bankruptcy; this isn't a bankruptcy case.

Mr. Lea:
(Reading from the decision:) "Pursuant to a plan of adjustment of appellee-city's debts, the holders of 93% of the indebtedness accepted, and received refunding

bonds, October 1, 1936."—188 of these refunding bonds.—(Continuing reading citation, concluding with the words "* * * and that the plaintiffs be restored to their position of holders of original bonds".) This is what it says: "If, then, the invoked section is a promise that the City will not refund the bonds of non-assentors on better terms than those of assentors," (and continuing through the words: "nor attempt to make any showing that as holders of refunding bonds they have sustained or will sustain any damage or injury")—and it is elementary that an agreement which causes no loss causes no damage. In other words, Your Honor, I just want to bring to your attention the facts, and I suppose you have read the case, and that was a proceeding under "J", just as this was, and so far as the allegations of the petition show, they merely say they are coming in to force these other creditors, the recalcitrant minority, if you please, bond speculators, if you please—they merely bought the bonds; that's the only crime they committed—to take what the others took. And, under that case, they said there was no legal duty to make them do it; and I think this Court will take judicial knowledge that the West Palm Beach case was dismissed, and even the other one is in Court now. I am not on that motion at all, but I just wanted to bring those facts to your attention.

Mr. Haycock:

If the Court please—

The Master:

Mr. Haycock, just a minute. Is there anyone else on that same side of the motion to be heard? (All counsel, proponents of the motion, indicated in the negative.) Well, now, gentlemen, all of your contentions will be given due consideration, but I don't think that this is the time for me to sustain them. I don't intend to start off my connection with this case by dismissing it. The Motion is denied.

Mr. Adams:
As I understand it, that covers the two papers, the motion of the American National Bank and the motion of Gould, Wiley and Thompson, to Dismiss?

Mr. Warren:
That's right; those two motions.

Mr. Berry:
Do I understand, Your Honor, this second motion, you overruled that?

The Master:
No, I overruled the motion, and if I find I am wrong, I will correct it before I am through.

Mr. Adams:
Your Honor, I think you will find the same points raised in the Answer and Objections.

The Court:
I assume these gentlemen will present the same matters before we are through.

Mr. Redfearn:
They have presented the same things in their Answer.

The Master:
Well, I am overruling the Motion.

Mr. Adams:
Now, that's all of your motions?

Mr. Warren:
Yes.

Mr. Lea:
I have several motions, but I don't believe, Mr. Adams, you are concerned with any of them; you don't represent any creditors.

The Master:
As I understand, there are some motions we can't argue because the creditors aren't present.

Mr. Gibson:
Judge, I would like to take a second on these rulings. Now, that's one of the important motions, and these hearings are going to go on for some time, and as I say, I am just wondering if time for appeal—well, that wouldn't come up until the Master's Report, would it?

The Master:
No.

Mr. Berry:
As I understand it, that motion may be renewed after the proof is in.

The Master:
You can raise these same points in your argument on final hearing, or in any way you see fit.

Mr. Redfearn:
The same points, I understand, are raised in the Answer.

Mr. Warren:
Not the same wording.

Mr. Gibson:
I wonder if it might be well to overrule the motion with leave to present it later in the proceedings, or something like that. There is no time element at all that would foreclose the re-arguing of it.

The Master:
I'll tell you now, I will hear you, and I am going to hear the case thoroughly, and you won't be cut off, but I can't see that there is any time element in it.

Mr. Gibson:
It was just a suggestion, in the abundance of caution.

The Master:
One of the last things I will try to do in this is to correct my mistakes before we get through.

Mr. Adams:
Now, Mr. Lea, here is your Motion to Require an Amendment to the Petition.

Mr. Lea:
Your Honor, I have a similar motion; I don't see it right here. (Search of papers made and document located.)

Mr. Redfearn:
And here's one for J. Howard Gould; that's the same as the motion that was already overruled?

Mr. Warren:
Yes.

Mr. Adams:
And there is one for an Amendment which is quite short.

Mr. Lea:
Yes. (Thereupon, proceeding to read same.)

Mr. Adams:
For the sake of the record, Mr. Lea, may I suggest that you amend, instanter, in this particular? There were no "tax participation certificates".

Mr. Lea:
I mean their "tax sales certificates".

Mr. Adams:
Can we amend that instanter? It appears at the top of the second page, and again down in the prayer.

Mr. Lea:
Yes. (Making suggested correction.)

The Master (After examining Motion):
You have alleged matters there that I think ought to be brought out, but you have alleged facts, and I don't think that a motion is a place to allege facts; that's a matter of proof, and the motion is denied. That's the motion of Ed. C. Wright & Co. to require Amendment to the Petition, filed September 10, 1940.

Mr. Lea:
Now, Your Honor, I have a motion here that may not be proper for the Court to rule on at this time, but I will read it. (Thereupon, reading said motion styled "Motion", the same being a motion to require original securities to be deposited with the Court, filed October 9, 1940.) Where the motion refers to the exchanges being made in "1936", I would like to correct that and make that "1937", inasmuch as we intend to prove the exchanges were made in 1937.

Mr. Haycock:
This is a motion to modify the plan.

Mr. Lea:
No it isn't.

Mr. Redfearn:
This motion prays that the original securities be deposited in the Court.

Mr. Lea:
Well, that won't affect your client.

Mr. Redfearn:
We think it will affect our client, and we are ready to argue that.

Mr. Lea:
This is just entitled "Motion". It is a motion to require original securities to be deposited with the Court.

The Master:
You had better change that date on the original, Mr. Lea. (Whereupon, counsel made the change in date above referred to.)

Mr. Lea:
Now, Your Honor, that is the Motion. As I understand it, and I think counsel will agree with me, that in these proceedings the new rules of civil procedure apply except where the Statute says that they shall not apply. Now, under the new rules of civil procedure, if a motion is made—and we have a right to submit proof to substantiate that motion before it is ruled upon. I have set forth in that motion I will agree certain facts do not appear in the record, and I therefore submit that under that motion we are entitled, in all equity and fairness and justice, to be heard. Now, they are coming in; a composition is a contract; no one is forced to take this. In other words, if the Court were to modify this plan, and the creditors didn't like it, they could back out; if the City didn't like it, it could back out. All they are doing is, two-thirds coming in, and you are the umpire, and if it is fair and equitable, we have to take it. Now, all we ask is they do equity, and that they come into Court and submit their securities and wait the final determination of this matter, whereas now they can sell their bonds tomorrow; there is nothing unreasonable about that.

The Master:
Anyone else on the same side?

Mr. Gibson:
I might say in that regard it is the practice of Judge Akerman, in the early days of the municipal bankruptcy cases—a deposit of the securities was required. As late as the Ft. Pierce case, in which there is a hearing coming up tomorrow, Judge Akerman modified the rule of depositing the securities, and he required the securities to be exhibited; that is, all securities that were the subject of a proof of claim must be exhibited to a bank or trust company and stamped and authenticated by the bank or trust company that the securities were exhibited to them so as to validate—you might say furnish a factual basis for the proof of claim, and effectuating of the bringing of the securities into Court. Now, in this situation, they have simply filed a paper, signed their name to it, and say they own them, and tomorrow they may be gone, or they might have sold them the day before. It is verified, but that's all. It is self-serving, entirely.

Mr. Lea:
One further thing I would like to say, in the light of the Avon Park case, in which Mr. Redfearn asked me about 77-B; all the way through that opinion the Court cites 77-B cases as controlling in the principles enunciated in composition proceedings.

The Master:
Just a minute; when is the citation on that case?

Mr. Lea:
That hasn't been cited yet; it is in the advance sheets of the Supreme Court of the United States. And I would also like to call further to your attention this 77-B case in which Judge Akerman, in a composition proceeding, re-

quired the original bonds to be deposited with the Court, contrary to the contention of the appellant in that case; they appealed it on that ground.

Mr. Haycock:
Was that a partial completion?

Mr. Lea:
It was not. A partial completion is the same, though, as an original proceeding so far as the proceeding in Court is concerned, as far as I understand. So we are not asking anything inequitable or unjust; we just say, if we are being forced in, we want to see, and I think it is fair; that's just on the facts alleged, and we are willing to prove them later on.

The Master:
All right; anything else? If not, I will hear from you gentlemen.

Mr. Redfearn:
May it please the Court, we are somewhat of an innocent bystander in the squabble between the assenting bondholders and non-assenting bondholders, in which they now seek to force the bondholders to bring in their securities and exhibit them, but it would appear if they couldn't bring them in, they would be classed as no debts of the city, and we would be in an advantageous position if that could happen, but whether they bring them in and deposit them, or whether they are exhibited here or not, they are still a debt of the City, and therefore this motion does become material to us, and where they start out by saying they allege on information and belief, and that so-and-so is the case, and ask Your Honor to sustain a motion on which they haven't produced any facts to substantiate, and which they allege on information and belief and say that all the assenting bondholders who have sent consents and

filed them in this Court should now be required to come to Miami and bring them, or send them down stamped by a bank, stating they own them; now, it is immaterial who owns them; this is in a Court of Equity, and if a man consents to a bankruptcy, and if he sells them the next day, that consent goes with the bonds, so it is immaterial whether they still own them or don't own them. But what they seek to do—and which hasn't come out—is that if they can enforce us to delay our case until we can run every bondholder down and get him to bring his bond into Court here we will be here forty years, and they will just harass Your Honor and everybody to the point where we will just give them the City; that's the purpose of the motion; they don't care whether we exhibit them or not; it is just the delay element. There is nothing in the Bankruptcy Act that requires them to exhibit the bonds, or requires them to consent to the plan; and, if Your Honor rules all these bondholders have to be sought to do that, they are not going to seek them, and if they don't come, they will say we haven't a majority in Court. And as to what Judge Akerman did in a 77-B case, and which isn't a municipal bankruptcy case, and may have been a compromise, it was probably some case that was consented to. It may be. They haven't produced the case here for us to see. What Judge Akerman did in a 77-B case isn't decisive as to what should happen in this bankruptcy case, and we think the motion should be denied. We don't think it is the law, and we don't think that in this case it should be required by the Court that every consenting bondholder must come into Court and stand in line and exhibit to you as Master, that "I now hold it and I am going to hold it while this is in bankruptcy"; if that was the law we couldn't have any bankruptcy cases.

Mr. Adams:

If the Court please, this motion is apparently directed at the use of consents for the purpose of filing the Petition,

as well as the use of consents in the later proceedings in the cause. You will recall that in bankruptcy there are two consents; there must be 51% filed at the time the Petition is filed. Now, we submit that the Judge has already ruled upon that. The Petition with the consents attached to the petition, to the plan and to the filing of the Petition, have been adjudicated by the Court and the Petition was permitted to be filed; so, as far as this motion might go to preventing them from being considered, I think that has already been adjudicated by the Court. His motion is in this way: Motion is respectfully made that this Court enter an order making it a condition precedent to any securities participating in these proceedings. Now, in so far as these consents, the 50—or, the 51% that were filed with the petition, we think that has already been adjudicated. So far as the facts of this motion are concerned, I don't think I would be running any risk if I committed my client to the results of the motion, if he will prove all the facts; and just as an illustration of the ridiculousness of the motion, here's one allegation of fact: "That each"—well, first I might call Your Honor's attention to the fact that there are several hundred, probably thousands of individual proofs filed; a great list of them; and he alleges "that each and every one of said consenting creditors has no knowledge whatsoever of the contents of said plan of composition to which it is consenting". That's his allegation of fact. Well, I'll take issue with him on that, and if he can prove that why we will carry on. Now, this is exceedingly pertinent and important. We don't know today whether there will, in the future progress of this cause, be any occasion to use any of the proofs of claim and consents that have been filed. Mr. Redfearn pointed out that there was a difference in composition in municipal bankruptcy from the ordinary bankruptcy. The fact a proof of claim is not filed doesn't relieve us of the obligation of that outstanding bond, so that the proofs of claim and consents are of value in this

cause only for voting upon the plan and determining, when the time comes, if it arises, whether 66-2/3% of the owners of the outstanding obligations of the City consent to the plan which has met the approval of the Court after full hearing, that it is a fair plan, and that it is a just plan and one that should be put into effect. We think the motion is entirely out of order at this time, and as Mr. Redfearn said, is thrown in here as a drag-net to delay the cause, and if possible to set up a situation that might develop to be impractical, and would serve no purpose at this stage of the game, and we don't think it would ever be an appropriate thing to be done, but certainly not now.

Mr. Redfearn:

And in connection with Mr. Adams calling your attention to this allegation on Page 2 of this motion, just preceding that there is something I hadn't got until now. They allege "that the said City of Coral Gables sent to each of said creditors a printed form combining both proof of claim and consent to the plan of composition". In other words, they are admitting we sent it to the creditors, and they sent it in. They admit that the City is the person that sent them to the persons who sent the claims in, and they then are trying to get Your Honor to rule if they don't present the original securities, they are not creditors, but yet they admit we sent them to the original creditors.

Mr. Adams:

May I make one other observation with regard to the showing of the records. I have been checking and keeping up with the proofs of claim on file. There have been presented to the Court quite a few motions by creditors, owners of bonds, reciting that they had sold, or had acquired, and correcting proofs of claim that had been previously filed and bringing them down to date to show the status of ownership after a change subsequent to the filing of proofs of claim, so the records in this case show that

at least to some extent the status of the present ownership of these securities is being kept up with and being kept current.

Mr. Lea:

I don't try to vindicate or to impugn the motives of my client one bit. He has a large stake invested here, and we think it is fair and just to treat everybody alike, and I don't think, and I want to say here, Your Honor, I have presented that motion in the utmost good faith, and I can back it up under the cases under 77-B, and particularly under the Avon Park case. Now, under 77-B it says, "In bankruptcy, parties in interest may file written or oral objections to claims". If nobody objects to them, how are they going to prove them? Just because they file a proof of claim, there is no proof everybody has to take it laying down. Going further, it says, "when objection is made, the objecting party has the burden of going forward with evidence to establish his objection". Therefore, we claim, and I will admit that a claim would make out a prima facie case if nobody objected, but if we do object, and if we submit to Your Honor valid objections and reasons why they all ought to come into Court alike, then I think in all fairness and equity we are being forced into something here that we don't know whether they own them or not, now. Now I want to direct Your Honor's attention to this late case against Avon Park. (Thereupon, reading from citation, commencing with words "We have emphasized", and concluding with "the responsibility of the Court entails scrutiny of the circumstances surrounding the acceptances".) And that's just what we have submitted to you, Your Honor; the ulterior motives which may have induced them; can the Court exercise informed, independent judgment. (Again reading from citation.) This is a plan, right now, and we are in a Court of Equity. Now, in all the other cases they were represented by a bondholders' committee; they were in this case, actually, when the exchanges were made in 1937.

Mr. Adams:

There is nothing in the record to show that, and it is not a true fact.

Mr. Lea:

That's a true fact, I think. Now, these other creditors are just like we are; we are creditors, they are creditors; they are forcing us in. Now, all we ask is to show their good faith; and the attorney for the debtor comes in and impugns our motives. Judge Akerman has allowed it and said it should be done in the case I have cited, and Judge Holland has required it in cases, so I don't think there is anything arbitrary about it at all.

Mr. Redfearn:

He interrupted before we finished. We waited patiently until he had finished, and—

The Master:

Wait a minute, Mr. Redfearn. Mr. Lea, will you list your authorities there and let the Stenographer take them down?

Mr. Lea:

Just leave a blank there and I will give them to him.

The Master:

All right; or you can hand me a list of them, and then give them to opposing counsel.

Mr. Lea:

All right, I will do that.

The Master:

I might as well say, I am going to reserve my decision on this point, and both sides can present authorities if they want to, but if you want to go on with your argument it is all right.

Mr. Redfearn:

In considering any decision of any Court you have to take the whole context. It is like reading a few words from the Good Book, where it says, "There is no God"; but, if you read the few words before that, it says, "A fool in his heart says there is no God". He reads from a decision here where the Supreme Court of the United States was taking this R. E. Crummer & Company to task for trying to inflict upon the City of Avon Park an arrangement by which they profited when the other bondholders didn't. We are not trying to profit. There is nothing here where one bondholder is trying to profit over another, and the statments he read from the Court was with reference to that set of facts right there. (Handing copy of citation to the Court.) I had an original made of that very matter; you will find it bears out our contention. Furthermore, his motion here is a complete answer to itself. When he says this: "The City of Coral Gables sent to each of its creditors a printed form combining both a proof of claim and a consent to the plan of composition, thereby getting each creditor to automatically consent to a plan of composition by the filing of its proof of claim". He alleges the City of Coral Gables sent it to their creditors, and they filed them. What is there to be talked about, if he says they sent them to the people? There is nothing further to be said, when he puts in their consent like that. Instead of going to the delay of searching out a thousand or ten thousand creditors, and asking them to come in and present their claims, when they have filed their proofs in a bankruptcy case, where the Statute doesn't require the same procedure as is required under the statute and prescribed in 77-B, and it would be a useless waste of time, and especially when he is trying to make them prove their claims when he said they have already filed them and that they were sent to them, and they filed them themselves.

The Master:
Are you through on your side now?

Mr. Haycock:
Your Honor, the only observation I wish to make is that in 77-B, as he read here, it refers to an objection to a claim, and my contention in answer to this motion is that if he, as a creditor, claims that another creditor has forwarded and filed in this case a sworn and verified statement, a statement that he is the owner of bonds, it is his duty to directly attack that claim and not in the general manner in which he has here, to require these bonds to be presented. If he knows of any of these claimants who have filed claims here and who are not the owners, even after they have verified these claims, it is his duty to attack that claim in the same manner we would attack any claim we got on a verified petition, that is, by plea or by answer or by motion for a hearing against that particular creditor.

The Master:
Is that all from you gentlemen?

Mr. Adams:
Just one question. In reserving the ruling, will that permit the offering of evidence by movant to sustain his allegations?

The Master:
I am reserving my ruling entirely. I don't know.

Mr. Lea:
I just want to make this one observation; I know of another case in this district where the Judge has required that. Should I cite that to you?

The Master:
Yes.

Mr. Lea:
That's the Belle Aire case.

Mr. Haycock:
Is that a partial refunding?

Mr. Lea:
No; but there is no difference.

Mr. Haycock:
There is a difference, because you substitute one obligation for another obligation, and it must be exchanged by someone, and—

Mr. Lea:
Well, you have two-thirds, so it is exactly alike; and in that case he compelled them to do that.

The Master:
Well, cite that case, also. The ruling is reserved on that Motion.

Mr. Lea:
I have another motion, but I don't think it can be ruled on until the testimony is in, and that is a Motion for a ruling on a modification of the plan, but I don't think that can necessarily be ruled on until the testimony has been presented to the Court.

The Master:
Well, it is not a motion that you want to present now?

Mr. Lea:
No, sir.

Mr. Redfearn:

It is a motion that raises a lot of facts, and while it is entitled a motion, it is really the submission of another plan, and to which we have responded, so I don't think it can be treated as a motion, although it is entitled as a motion, and we want to take evidence on his plan and our response to it; but this will go over, I suppose, until some future time.

The Master:

Yes, until some future time.

Mr. Haycock:

Now, this motion here of C. J. Root, is that passed, or does he allow that to go on into the case?

Mr. Adams:

Yes, we will have to pass that and have a hearing on that.

Mr. Haycock:

Well, that takes up practically all the motions, doesn't it?

Mr. Redfearn:

No; there is another motion here, one of our motions. I think that covers all yours, don't it, Mr. Warren?

Mr. Warren:

Yes, sir; I have no more motions addressed to the Petition.

Mr. Redfearn:

Now, may it please the Court, in addition to the response I mentioned, which takes issue with that plan and under which we ask that they produce certain records— and we will serve them with Notice to Produce in due course, especially under this recent decision of the Supreme Court

of the United States, a copy of which has been handed to Your Honor,—as to how they obtained the securities and what they paid for them, all in connection with the equitableness and fairness of the plan. We will give them written notice of that as the case progresses.

The Master:
You mean that's a response to Mr. Lea's Motion that he hasn't presented?

Mr. Redfearn:
The Motion he hasn't presented and which he calls a Motion for a Substitute Plan. We have responded to that. Now, in connection with the motion that has just been argued and which is a motion praying that original securities be deposited in Court, they filed, I suppose supplementary to that, a paper which they entitled "Objections to Claims". Now, when that objection is read, we find it is objections to claims of creditors who have filed claims in this case; that's really what the motion is. Now, they start out by saying in these objections: "Comes now Ed. C. Wright & Co." (and so forth, reading through paragraph Numbered 1). Well, we raised a motion to strike that allegation, on the ground that the issues sought to be raised by said objection to claims are alleged issues between the said E. C. Wright & Co. and each individual creditor, and such objections cannot be raised in such general form. Now, he takes a sweeping objection to all claims, and says he objects to all of them. Now, under the rules of practice in a Court of Equity, and in a Court of Bankruptcy, he has got to object to each specific claim if he is going to file a valid objection; he can't just come in and say "I object to all proofs of claims filed and all consents"; he just files the general objection and says he objects to all of them without specifying which claims he objects to, so we think these objections should be denied. (Next reading Paragraph Numbered 2.) Now, Your

Honor catches that this is an objection to claims, and he is going through a long recital of facts which would necessitate testimony being taken on the response, but it can't be raised in this general, scatter-brain objection to all of the claims and consents filed. Now, this is an objection to a claim, and he is alleging "on information and belief". Objections are legal questions raised, and not allegations of fact on information and belief, so his objections here are not couched in language that would make them a motion or objection, either. (Thereupon, Mr. Redfearn concluded the reading of the objections to the Master.) Now, here is an instrument entitled "Objections to Claims", objecting to the claims of all creditors who have filed claims in this case.

The Master:
How is that before me, Mr. Redfearn?

Mr. Redfearn:
I'm trying to find out; and we have moved to strike it for that reason. It is just filed as Objections to Claims, and we filed a Motion to Strike it on the grounds—

The Master:
Wait a minute. Where is your motion?

Mr. Redfearn:
It is entitled a Motion to Strike, filed in the name of the City of Coral Gables.

The Master:
What was the date it was filed?

Mr. Adams:
October 19th, 1940.

The Master:
You are calling up your motion?

Mr. Redfearn:
I am calling up my motion to strike these objections on the ground they are alleged issues between Ed. C. Wright & Co. and each individual creditor, and such objections cannot be raised in such general form. (Thereupon reading Motion to Strike to the Master.) These were filed before the Sanford and Homestead cases were decided, so I presume they considered the issues raised in those cases which went against their contentions. Now, we don't think these objections should be filed, because objections are in the nature of a motion, always, and can raise only issues of law. Now, he starts out with objections to claims, and pleads a lot of irrelevant facts and alleges on information and belief such-and-such is the case, repeatedly, and that is in no sense a motion or proper objection to the Court, and we move it be stricken. All these questions that have been raised in it are raised in their Answer, anyway.

Mr. Lea:
In the first place, I think they are just a little bit out of order, in as much as I haven't directed any of my objections toward the debtor. They represent the debtor, I have objected to claims of every creditor. Now, under the Bankruptcy Act, Your Honor, as you well know, it is nothing but a contract between the majority with the City, compelling the minority to take what the majority is offering. Now, under the late Supreme Court case it says the Court can go into the motives, can go into everything concerning the acceptances of the plan of composition to show whether or not it is a good-faith plan, right before this Court. Now, I will admit that matters have been set up in those objections that require proof, but under the new rules of civil procedure I can submit a motion, and

then prove it. That doesn't make any difference, just because I entitle it an objection or motion; and in the first place, I think a Motion to Strike is out of order, and in the second place, that the Court cannot rule on it at this time because we have a right all the time to object to those claims if it is shown they are not filed in good faith. (Here reading from Avon Park Case, Supreme Court decision.) Now, we think in all fairness to us we have a right to know why they put the plan of composition before this Court, and all of the facts surrounding and entailing the acceptance. There is nothing inequitable about that, and just because it is entitled an objection to the claims, and there is no proof there—naturally we can't prove it until we get into the testimony.

Mr. Redfearn:

We are trying to keep from cluttering up the record, when they have raised the same questions in their Answers; they can go into it in the testimony.

*

Mr. Lea:

All we want to do is to be heard on all the case.

Mr. Warren:

If I may be heard, Mr. Redfearn stated that one of the issues had been settled as to these holders of refunding bonds by the Sanford case. The Sanford case,—I want to tell the Court just the difference between it; I was in it from the very beginning and I have been in this from the very beginning—since the bankruptcy was started. (Thereupon, reading the Resolution of the City of Sanford in the case referred to.) I just wanted to get that before the Court.

Mr. Redfearn:

Yes; but it is the same American National Bank of Tennessee that's here against the City of Coral Gables that is in that case against the City of Sanford.

The Master:

Just a minute, Mr. Redfearn. Is there anything further from you?

Mr. Warren:

Just this point, I wanted that in there to reserve the point so we could have all points covered in the testimony of this case. We have a right to object to anybody's claim in this case, and that's why we filed the objections.

Mr. Redfearn:

He has a right to object specifically to the claims.

Mr. Warren:

And I don't know it is any concern of the debtor how we object to the claims of other creditors. As a rule the other creditors are represented by bondholders' committees. Now, they are coming in, two-thirds of them, forcing us to join, and all we ask is we be entitled to what they ask us to do, and I say, under the new rules of procedure we have a right to prove those facts on a Motion.

The Master:

Well, at first I asked Mr. Redfearn how this came before me; I see he has a motion to strike there, and of course, that brings it before me. The question is whether he has a right to make that motion. I think that the main petitioner has a right to move to strike anything that is liable to encumber the record, and frankly, I don't think you can file a scattergum objection to claims and expect the Court to sustain it. If you have objections to these claims, the creditors should be brought in in the objections. Suppose, for example, that I postpone this matter and you undertake to bring in those creditors. I don't know whether they are all in or not, and I sustain that Motion to Strike, with leave to amend these objections if you see fit.

Mr. Lea:
All right, sir; I certainly will amend them.

Mr. Redfearn:
With leave to amend at any time during the proceedings, or any particular date?

Mr. Lea:
I want to reserve the right to amend until the case is closed.

The Master:
I think objections that you raise, if you raise them properly, can come up at any time, and I am not limiting you to any particular time.

Mr. Redfearn:
That is, any time during the progress of the case?

The Master:
Yes.

Mr. Adams:
I think that disposes of all the motions, Your Honor; that is, excepting two. Mr. Watts, representing Mr. Root, has a motion that is similar to Mr. Gibson's client's. He could be here, and we are agreeable to postpone that.

The Master:
Well, if the parties are not represented, of course they can't be heard. Do you want me to prepare these orders on these motions, or will counsel prepare them and present them?

Mr. Warren:
In what respect do you want orders prepared, Senator? You will make your report to the Court, won't you?

The Master:
Yes.

Mr. Warren:
And then we will except to that.

The Master:
If you want the Order to appear just as I have announced it in the minutes of the proceedings, that's all right with me.

Mr. Warren:
I think that's all right.

The Master:
I think that would be the best way to do it.

Mr. Warren:
Yes; and then you have a continuous transcript.

Mr. Berry:
I think that transcript should be included in your final report, and then referred to the Court, and we can object to it, and that will have everything before the Court.

The Master:
Yes, that will be all right.

(At this juncture in the proceedings, a discussion was engaged in relative to the time for the taking of testimony herein, and because of conflicting dates of counsel representing the respective parties herein, and of the Master, it was determined the earliest possible date to commence would be January 20, 1941, at 2:00 o'clock P. M., to which time, by agreement of all counsel present, the hearing was adjourned, same to be held at the City Hall of the City of Coral Gables, because of the fact that the books and rec-

ords, and the witnesses to be produced on behalf of the City of Coral Gables, would be more readily made available.)

Hearing adjourned to January 20, 1941.

In the United States District Court in and for the Southern District of Florida, Miami Division.

In Bankruptcy, No. 1867-M.

In the Matter of The City of Coral Gables, Florida.

This cause came on for further hearing before the Honorable F. M. Hudson, Special Master herein, at 2:00 o'clock P. M., at the City Hall, in the City of Coral Gables, Florida, on the 20th day of January, A. D. 1941.

Thereupon, the following proceedings were had:

The Master:
Are you ready to proceed? How about Mr. Redfearn?

Mr. Adams:
I think we might go ahead without him. We are ready to proceed, Your Honor, with the testimony to sustain our issues.

The Master:
Now, will counsel please give their names again to the Reporter, and state whom they represent? We will start over here and go around the table.

Thereupon, Counsel made the following announcement for the record:

Ira C. Haycock for the City of Coral Gables.

Morton B. Adams, City Attorney, and D. H. Redfearn, for the City of Coral Gables.

Edwin M. Clarke and Olin Watts, of the firm of Jennings & Watts, of Jacksonville, representing C. J. Root.

F. A. Berry, for Ed. C. Wright & Co. and the American National Bank of Nashville, Tennessee.

Stuart B. Warren, of Wylie & Warren, for American National Bank, Albert Roberts, Jr., and J. Howard Gould.

Joseph P. Lea, Jr., for Ed. C. Wright & Co.

The Master:

All right; you may proceed, Mr. Adams.

Mr. Adams:

First I want to offer in evidence several documentary matters. I don't have but two of these maps, however. The first is an official map of Dade County, Florida, prepared by Edmund Friedman, the County Engineer, and certified to under date of July 9, 1940, to which we have added in red the boundaries of the City of Coral Gables, and we would like to offer that as Exhibit No. 1.

The Master:

Any objection? (None stated.) Let it be admitted.

(Instrument marked in evidence as Petitioner's Exhibit No. 1.)

Mr. Adams:

Now we have another map of the City of Coral Gables which is a composit map of the various subdivisions of the different sections in the Gables, which was also prepared by Mr. Friedman, and it shows all of the City ex-

cepting the acreage portion and the bayfront south of the Coral Gables Canal and a little strip of land that runs from LeJeune Road out to the Canal. There is shown on this map, added to the printing, red lines indicating tracts of land which have been excluded by judgments of ouster, and which judgments will be further offered; and in blue, there are two areas concerning which there are now pending quo warranto suits. We will offer in evidence the pleadings in those suits to substantiate those notations on the map. We offer that map as Exhibit No. 2.

Mr. Clarke:

May I inquire as to whether you are later going to put in a map of the bayfront section?

Mr. Adams:

No, for the reason we don't have one already printed, and in the second place, it is all undeveloped acreage land, and in the testimony it is referred to largely as acreage land. These are the printed maps that we have; the portions that don't appear on here are of minor importance in the area of the town.

Mr. Berry:

If the Court please, without making objection at this time, these maps are submitted for the first time and we have no idea whether they are correct or not. We assume they are, but should it be necessary to further describe the limits of the town or make objections to the correctness, we wish to reserve that at this time; as they are introduced, it is the first time we have seen them, and they will be admitted for the purpose for which they are offered.

The Master:

All right; with that reservation they are admitted.

(Instrument marked in evidence as Petitioner's Exhibit No. 2.)

Mr. Adams:

Now I offer in evidence certified copies of the final judgments of ouster in six cases. The first is in the case of State ex rel. Bonnetheau, which excluded 32.4 acres; next, the case of Mary Irene Dorn, which excluded 11 acres; next, Mark C. Honeywell, which excluded approximately 5 acres; next, Ernest C. Laesch, which excluded 5 acres; next, Katherine G. M. Laesch, which excluded 15 acres; and M. R. Bennett, et al., which excluded 1,320 acres. These are certified copies of the final judgments in those various cases.

Mr. Berry:

If the Court please, I object to the filing of them unless there is a showing that it materially affects the financial status of Coral Gables, otherwise I think it uselessly encumbers the record. There is no use of putting it in. We have generally described the boundaries of it, and there is no dispute about it yet, and the mere ouster of it, I don't—the mere ouster of people from it, I don't see it is material to any issue here which is, the solvency or insolvency, or inability to meet the debts of Coral Gables, as I understand the issues to be here now.

Mr. Lea:

I join in that objection, Your Honor.

The Master:

Let the objections be noted, and the decision will be reserved. Now, is that all to go in as one exhibit?

Mr. Adams:

Yes, sir; I have pinned it together for that purpose.

(Instrument marked in evidence as Petitioner's Exhibit No. 3.)

Mr. Adams:

Now I offer in evidence the original copies of two Writs of Quo Warranto, in suits which are now pending, involving one suit on the relation of J. A. Bechard, 10 acres, the other suit on the relation of D. C. Drawdy, 5 acres. These are the copies of the writs issued by the Court. We offer them in evidence for the same purpose.

Mr. Berry:

We renew the objection in the same form.

Mr. Lea:

We also join in those objections.

The Master:

Let the objections be noted; decision reserved.

(Instrument marked in evidence as Petitioner's Exhibit No. 4.)

Mr. Adams:

Now we have a certified copy—or rather, a certificate by Mr. G. N. Shaw, as Director of Finance, showing the status of the debts of the City of Coral Gables as of January 1, 1937, that being the date as of which the voluntary refunding was made and as of which this plan of composition is offered. We are offering it in this form so that counsel and everyone may have that before them during the progress of the cause.

Mr. Warren:

To which proffer we object for the reason that it is immaterial, irrelevant, and not within the issues, the question

being the solvency of Coral Gables as of the date of the filing of its petition and not its condition in 1937. The question before the Court at this time is, the solvency and the ability of the City of Coral Gables to pay its present outstanding debt, so we object to this.

The Master:
Let the objection be noted. The Master will rule on all of these objections later on.

(Instrument marked in evidence as Petitioner's Exhibit No. 5.)

Mr. Watts:
If Your Honor please, would it be proper to suggest this, that where an objection is made by one of the attorneys representing one of the creditors, that that objection will stand as to all the creditors represented here unless something to the contrary is stated? It might save a little time.

The Master:
The objections will be so treated unless there is some objection to that course.

Mr. Adams:
That's all right with us.

Mr. Lea:
I want to further object, subject to further cross examination of Mr. Shaw, who is here present.

Mr. Adams:
He is right here.

The Master:
Yes, that right certainly you have.

Mr. Adams:

We offer as Exhibit No. 6 a printed copy of Ordinance No. 269, which describes in detail the plan of composition offered in this cause. That copy is certified by Mr. Shaw, the City Clerk of the City of Coral Gables.

(Instrument marked in evidence as Petitioner's Exhibit No. 6.)

Mr. Adams:

We offer as Exhibit No. 7, certified copy of the Decree of the Circuit Court of Dade County, Florida, validating in part the bonds and certificates proposed to be issued by this Ordinance No. 269.

(Instrument marked in evidence as Petitioner's Exhibit No. 7.)

Mr. Adams:

We offer in evidence as Exhibit No. 8, a printed copy of the Opinion of the Supreme Court of Florida, filed July 30, 1937, affirming the final decree just filed, which is reported in 176 So. at Page 40.

(Instrument marked in evidence as Petitioner's Exhibit No. 8.)

Mr. Adams:

We offer in evidence as Exhibit No. 9, certified copy of Ordinance No. 289, amending and modifying Ordinance No. 269 so that the plan of refunding, and now the plan of composition, should conform to the Opinion of the Court as shown in the two previous exhibits.

(Instrument marked in evidence as Petitioner's Exhibit No. 9.)

Mr. Adams:

I would like to be sworn now, if the Master please. (Mr. Adams was thereupon sworn as a witness.) If the Master please, I have prepared a sworn certificate, attached to which is a schedule of the bond litigation that the City of Coral Gables has been in since 1933, showing the approximate date of the institution of the suit, the Court number and which Court; the cases were all in the Circuit Court of Dade County or the United States District Court for the Southern District of Florida, Miami Division; the name of the creditor, the approximate amount involved, the disposition of the case or its present status. Now, I would like to file this, for the brevity of the record, and submit myself for cross examination on it.

Mr. Warren:

If the Court please, we object to that because it is immaterial, for one thing; second, that the thing is incomplete. If you will look at the exhibit attached to the affidavit, it doesn't show the amounts which they were settled for; it shows merely an amount, and it was settled for less; and the thing is incomplete and not competent at this time.

The Master:

Let the objection be noted.

(Instrument marked in evidence as Petitioner's Exhibit No. 10.)

Mr. Adams:

We offer in evidence as Exhibit No. 11, certified copy of City of Coral Gables Ordinance No. 347, which is the ordinance declaring the necessity for these bankruptcy proceedings and authorizing the institution of these proceedings.

Mr. Warren:

Just a minute. Did I understand, Mr. Adams, we would be at liberty to cross examine you later on this Exhibit No. 10?

Mr. Adams:

Yes; I have been sworn as a witness.

The Master:

Certainly.

(Instrument last offered marked in evidence as Petitioner's Exhibit No. 11.)

Mr. Adams:

We offer in evidence as Exhibit No. 12 a certified copy of—rather, a certificate of Mr. G. N. Shaw, City Clerk and Director of Finance, showing the status of debts of the Petitioner as of June 30, 1940, which is three days subsequent to the date of filing this Petition. It is certified to by him as the Director of Finance as being taken from the original records of the City.

Mr. Berry:

I assume that is subject to cross examination?

The Master:

All these are subject to cross examination, Gentlemen.

(Instrument marked in evidence as Petitioner's Exhibit No. 12.)

Mr. Adams:

We offer as Exhibit 12-A—and by way of parentheses, I am using "A" because it is closely allied to 12—

Mr. Lea:
Will you make it 13? In referring to exhibits in the argument later you will get all mixed up referring to As and Bs.

Mr. Adams:
All right. That's a certificate of the status of the overlapping Dade County and School debt affecting the land of the City of Coral Gables as of December 10, 1940.

Mr. Warren:
We object to that as being immaterial and irrelevant and not within the issues involved.

The Master:
Note the objection.

Mr. Warren:
It is further objected to that it is not certified to by the proper official of the County and is not the best evidence.

Mr. Lea:
I further object to it on the ground it is only sworn to as "made under the direction and supervision of G. N. Shaw".

The Master:
Note the objections.

(Instrument marked in evidence as Petitioner's Exhibit No. 13.)

Mr. Adams:
We offer as Exhibit No. 14, certificate of Mr. Shaw as Director of Finance showing a statement of the tax levies and current collections of the City of Coral Gables each

year beginning in 1925-26 through 1939-40, and of the levy for 1940-41 fiscal year.

Mr. Lea:

I object to that on the grounds that it contradicts the records and contradicts the City Charter in that it is not made in accordance with the laws of the State of Florida, these assessments, as they are put up in there.

The Master:

Note the objection.

(Instrument marked in evidence as Petitioner's Exhibit No. 14.)

Mr. Adams:

We offer in evidence as Exhibit No. 15, certificate of Mr. Shaw as City Clerk, and as Director of Finance, showing the annual amount of building permits issued by the City of Coral Gables for the years 1925 to 1940, inclusive.

Mr. Berry:

Mr. Adams, may I inquire; this says building permits; is that building permits for all purposes?

Mr. Adams:

Yes; and the amounts are the amounts stated in the application for the building permits.

Mr. Berry:

Does this include repairs and rehabilitation and things of that sort?

Mr. Adams:

Well, maybe you better cross examine Mr. Shaw about that. There is a minimum below which you do not have

to get a building permit for repairs, 30 or 50 Dollars; it does not include that, but it includes other things.

Mr. Berry:
I am not speaking of trivial matters; generally, every permit that has been issued is within the limits of this?

Mr. Adams:
Yes; that's correct.

(Instrument marked in evidence as Petitioner's Exhibit No. 15.)

Mr. Adams:
We offer as Exhibit No. 16, certificate from Virgil D. Reed, acting Director of Census, on the letter-head of the Department of Commerce, Bureau of Census, Washington, giving the population as of April 1, 1940, of the City of Coral Gables, as 8,294, and as of April 1, 1930, as 5,697.

Mr. Lea:
I want to make the objection that that doesn't determine the classification of the population, what percentage is negro and what percentage is white; that has a great deal to do with it, and if that certificate was entered pursuant to a letter, I still object to it on the ground it doesn't indicate the true census.

Mr. Warren:
The further objection that it is not certified properly under the Act of Congress.

The Master:
Note the objection.

(Instrument marked in evidence as Petitioner's Exhibit No. 16.)

Mr. Adams:

We offer as Exhibit No. 17, certificate by Mr. Shaw showing a statement of the defaulted situation of the City of Coral Gables in regard to its bonded obligations at the close of each fiscal year as they appear in the annual certified audit reports of the City.

Mr. Watts:

If the Court please, May I ask Mr. Adams this question?

The Master:

Yes.

Mr. Watts:

I assume you will put in certified copies of the audit reports?

Mr. Adams:

We had not intended to, because of the volume of them; they are available for examination.

Mr. Watts:

They will be available for examination?

Mr. Adams:

Yes. The reason we hadn't planned to do that is that a very large percentage of the audit reports would be immaterial to the issues involved here, and one reason for having the hearing out here is that they are available for cross examination of Mr. Shaw.

(Instrument marked in evidence as Petitioner's Exhibit No. 17.)

Mr. Adams:
We now offer in evidence the Exhibit in the Court file to the Petition in Bankruptcy, being the consents of creditors to the filing.

Mr. Lea:
Well, just a moment; we object to that because that is already in the record; and we further object on the grounds it doesn't show on there they have filed proofs of claim, Your Honor.

Mr. Adams:
Well, let me finish the tender.

Mr. Lea:
All right.

Mr. Adams:
We are offering these original consents to the filing of the petition in bankruptcy, and move that this Certificate of the total amount of bonds and certificates shown to be held by the parties so consenting at that time are the totals in those certificates, in lieu of encumbering the record with these voluminous documents.

Mr. Lea:
We object to it on the ground it is unnecessarily encumbering the record, because it is in the pleadings.

The Master:
Is this in the pleadings?

Mr. Adams:
Yes, sir; it is an exhibit to the Petition.

Mr. Lea:

In other words, Your Honor, if this were taken up, they would have to be put in the record twice.

The Master:

I don't see the use, Mr. Adams, since these things are in the record in the pleadings, I don't see any necessity of offering them now.

Mr. Adams:

That's all right; I just wanted to be sure to offer them and be sure of Your Honor's attitude on that point.

The Master:

If it becomes necessary to offer them later, you may do so, but I don't see any necessity now.

Mr. Adams:

That's all right. At this time we wanted to raise the point and get your ruling; that also serves another purpose, of getting back onto our exhibit numbers as they originally were. Now, this is an offer, and if counsel are agreeable to it, all right, otherwise we will put the necessary witness on the stand. We appreciate in asking this that it will be the indulgence of counsel. Mr. McGarry, the Mayor of Coral Gables, was called out of town on very urgent business, but had prepared his testimony covering a certain portion of what we consider essential facts to get in the record. When he found he had to leave town, he completed it as a transcript of his testimony and swore to it. I would like to tender it subject to counsel's review of it at a later date, and of course, it would be subject to cross examination. If they don't want to let it go in in this shape, we will produce Mr. McGarry later.

Mr. Warren:
We object to it at this time, not knowing what is in it, and for the reason the witness isn't here for Your Honor to see his demeanor, and to cross examine him, and it is certainly irrelevant at this time.

Mr. Lea:
I don't think it is the proper procedure, Your Honor.

The Master:
The objection is sustained.

Mr. Adams:
I would like to withdraw the offer; I know it is not competent.

The Master:
I see no objection to your withdrawing it at this time.

Mr. Adams:
I will ask that the Master swear Mr. Shaw.

366 G. N. SHAW was called as a witness on behalf of the Petitioner, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Adams:
Q. Mr. Shaw, please state your name, age and place of residence.
A. G. N. Shaw; age 43; living at 333 Velarde Avenue, Coral Gables, Florida.
Q. How long have you been living in Coral Gables?
A. Since July of 1929; and I had previously lived in the Miami area for three years.

Mr. Berry:

Mr. Adams; interrupting: If Your Honor please, we have objected to the testimony of the financial condition of the City prior to the filing of this petition. If we may generally offer that objection now which Your Honor has noted, and let it be understood that all the testimony which I presume Mr. Adams will go into prior to that time of the offering of the exhibit, that that will save making the objection each time, and will save a great deal of time, and we can take that up on cross examination, and that it be considered that there is an objection to every question, and answer given to them, and so on, all the way through.

The Master:

It may be so noted.

Mr. Adams:

That's all right.

Q. Mr. Shaw, what official connection do you have with the petitioner, the City of Coral Gables?

A. City Clerk and Director of Finance of the City of Coral Gables.

Q. How long have you held those positions?

A. Director of Finance since July of 1929, and City Clerk since March, 1931.

Q. Have you held them continuously since those dates?

A. I have.

Q. As a part of your official duties as City Clerk and Director of Finance, what, in general classifications, records of the City do you have under your custody and control?

A. All records as to the proceedings of the City Commisson, and as to the finances and transactions of the City. And in general, I might say all records but correspondence of the City Manager's office and of the other departments, are under my custody and control.

Q. Are you familiar with the present financial affairs and transactions of the City?

A. I am.

Q. From those records are you familiar with the purposes for which the present outstanding bonded indebtedness of the City was issued?

A. I am.

Mr. Warren:

I want to object to that question, that the purposes for which the bonds were issued is immaterial and irrelevant in this proceeding, and we object to it for that reason.

The Master:

Note the objection.

Q. Mr. Shaw, will you please state into the record the purposes for which the first foud bond issues of the City of Coral Gables were issued?

Mr. Warren:

Objected to, if the Court please, for the reason that there is no challenge as to the legality of the issues, there is no challenge that they are a bona fide debt of the City; it is immaterial and irrelevant, and will tend only to enlarge and encumber the record.

Mr. Lea:

And further, on the ground that Mr. Shaw's statement is not the best evidence.

The Master:

Note the objections.

A. The first issues of December 1, 1925, for $550,000., 5½% series bonds—

Mr. Berry:

We object to that on the ground it is hearsay; the gentleman, by his own testimony, was not connected with the City at that time, and necessarily can't know at first hand, and the records would be the best evidence.

Mr. Warren:

We renew the former objection to that, if the Court please.

The Master:

Note the objections.

A. (Continuing) The proceeds of the bonds was for the purpose of buying sites for administration buildings, fire stations and jail, and municipal Court, for $300,000; the laying of storm sewers for $150,000; and the acquiring and improving of land for park purposes for $100,000. With that, the City bought two 25 by 100 foot lots.

Mr. Clarke:

If the Court please, may I inquire as to whether this witness is testifying from his knowledge, or reading from a paper he has prepared, or just what basis is this being given on? It appears the witness is reading from some paper here, and if so, it seems the paper is the best evidence, if it is admissible.

The Master:

You, of course, will have the privilege of cross examination hereafter, but if you want to interject that question now, it is permissible.

Mr. Adams:

We have shown by the examination of Mr. Shaw that he is the official custodian of the records of the City, and

the Commission's meetings, and ordinances, and so forth, and asked him to testify from his knowledge of those records. I might say right now, and we might as well settle this question right now; we admit that as a technical matter of proof they can probably force us to bring up the original records from downstairs, and have Mr. Shaw testify—go through those original records and testify from them direct, or even probably to the extent of forcing us to file certified copies of these original documents which are very lengthy, and from which we only need a very limited amount of infirmation; and I would like to raise that issue right now as a practical matter with counsel, as to whether we will be put to that necessity or not.

Mr. Watts:

If the Court please, speaking on my own behalf and on behalf of my client, I have no desire to cause the production of each original record, but I certainly oppose the witness testifying about a lot of hearsay matters, and particularly and more fundamentally with respect to the purposes for which these bonds were originally issued. If we are going to go into the purposes for which these bonds were originally issued and get into the questions which have been before the Courts for a long time—and so far as I know in every instance the bonds have been declared valid—if we are going into that in this proceeding, it is going to take a tremendously long time, and is going to, as I see it, involve a great many things that are not material as to whether or not the City is able or unable, as the case might be, to meet its debts as they mature. And I again want to object to that line of testimony, and ask the Master to strike it.

Mr. Berry:

Supplementing that, if the Court please, the Petition filed alleges certain indebtedness that is due by the City. We have not controverted that, at least at the time that it

was originally outstanding. Now, why go into the necessity of the issue and what has been done with the money? It might have been stolen; I don't know; and I don't think it is material, and it is on the ground that it is without the scope of Your Honor's examination that I am objecting to it. The question here is the indebtedness and whether they can pay it, and I don't see it throws any light on the situation whatever. And further, if the Court please, this gentleman came into the city in 1929, and he cannot identify and say that a record in 1925 is the record, or not; they will have to get someone else; and he is testifying purely from hearsay on it.

Mr. Warren:

There is a further objection, if the Court please, that there is nothing in their petition which would justify their going into the purpose of these bonds and when they were issued and why. They alleged blanketly the bonds were issued, and they admit their validity. Why go into the question at this time of what they were issued for?

Mr. Lea:

I object to it on the ground it is all set up in Ordinance 269, a certified copy of which has already been put in the record, showing that the City had this outstanding debt as of January 1, 1937. This is entirely irrelevant.

The Master:

Well, Gentlemen, I think the appropriate course for the Master is to let everything into the record that counsel want to offer, and then rule on it later on as to whether it is revelant or not, and the whole matter will then be before the Court. I know of no better way to get it before the Court, so I shall not rule on those objections now.

Mr. Adams:

If the Master please, on the other question I raised, I don't mind, and I don't think it will be confusing at all in the future, for you to reserve your ruling as to the materiality of the testimony. We think we will show that before we get through. I think the City, however, will leave itself in a dangerous position if, in the face of these technical objections on the ground of best evidence, if we go ahead and close our record without offering the best evidence. This may call for a peace council with opposing lawyers. I don't know what's the best way to work it out, but I, for one, as representing the City, wouldn't be willing to close the record without stopping and going downstairs and getting the best evidence. I would like to ask Mr. Shaw two or three questions going solely to this question of best evidence objection, because I am not going to close the record with you all continuing the best evidence objection, because we know the form in which we are offering it is not the best evidence.

By Mr. Adams:

Q. Now, Mr. Shaw, aren't you also Tax Collector of the City of Coral Gables?

A. I am.

Q. Since you have held—well, how long have you been Tax Collector?

A. Since July of 1929.

Q. As City Clerk, Tax Collector and Director of Finance, are all of the original records pertaining to those departments of the City's affairs under your control and in your custody?

A. They are.

Mr. Clarke:

For what period?

Q. Yes; for what period?

A. Since July of 1929 as to the records of the Director of Finance and Tax Collector, and since March of 1931 as to the records of the proceedings of the City Commission.

Q. Now, since those dates it has been your official duty to prepare and make those records, hasn't it?

A. It has.

Q. How about the official records of the City prior to those dates? Have they, as made up, been in your custody and control?

A. They were taken over by me on the dates mentioned, and have since been in my custody and control.

Q. Are the certificates which have been offered in evidence here as exhibits, and which are signed by you—well, state how those were prepared.

A. Those certificates were either actually prepared or verified by me from the original records of the City.

Q. How long have you been working, been making a study, and state how intensive a study have you been making of these records.

A. For the past six months.

Q. Have you prepared from the records memorandum of data which we have advised you we would question you about in this proceeding?

A. I have.

Q. Where did the memorandum come from?

A. All of that data was either taken by me personally from the original records, or verified by me after having been taken from the records by others in my office. Practically all of the material that I have before me has actually been prepared directly from the records, by me.

Q. And it is from these memorandum that you now propose to testify?

A. I do.

Q. Is this work of study of these records part of your duties as City Clerk and Tax Collector and Director of Finance?

A. It is.

Q. And done in your official capacity?

A. It is. I might add to that, Mr. Adams, I said that I had been studying the records for six months That would sound as though I would be prepared to answer any question that might be asked me about the City from the time of its Charter. I have had other duties during that six months. I mean the study has been over that time. I don't want these gentlemen to think that I may not have to stop and get other records from which to testify in the future.

Q. Do you have available for their examination the original records from which you have made these certificates and memorandum for testifying?

A. I do.

Mr. Adams:

Now I make my gesture to opposing counsel. If we can settle this question now, fine; if we can't, let's see, then, what we can do.

Mr. Warren:

So far as I am personally concerned, as to those matters which are material; but we will concede at this time that the matters that you are trying to introduce are immaterial.

Mr. Lea:

Your Honor, we do not wish to waive any right of legal objections we have to this testimony, as to the legal sufficiency of it, in as much as we are the defendants.

Mr. Clark:

I don't think we should be asked, as a blanket proposition, Mr. Adams; I believe we have been rather liberal in allowing some things we think are immaterial to go in, but it is those things which we think are so immaterial as are cluttering up the record and confusing the record that we are making the objections to.

Mr. Adams:

The City would like to reserve the right to offer the best evidence before the Master's Report is closed, as to any facts considered, ruled upon by the Master to be material and yet excluded on the ground of the objection, because it is not the best evidence.

The Master:

It is so ordered. It seems to me that the foundation that has now been laid by Mr. Adams in his examination of Mr. Shaw, that under that this testimony is admissible, but I want to announce here that before this case is closed, if any ruling of mine makes it necessary for any party on either side to offer additional evidence, the way will be open for him.

(Thereupon, the last answer of the witness as recorded on Page 66 hereof, was read to the witness, as follows: "A. The proceeds of the bonds was for the purpose of buying sites for administration buildings, fire stations and jail, and municipal Court, for $300,000; the laying of storm sewers for $150,000; and the acquiring and improving of land for park purposes for $100,000. With that, the City bought two 25 by 100 foot lots.").

A. (Continuing) With that, the City bought two 25 by 100 foot lots in Block 26 of Section K—four 25 foot by 100 foot lots; I have two items in there; and the triangular

Block 5 of the Biltmore Section, approximately 210 by 210 by 287 feet, for $300,000. It also acquired various parkways, plazas and center parkways in the streets which had been shown on the plats made by the Coral Gables Corporation as a portion of the parkway and beautification system, or had been dedicated by them to the public, for $100,000; and all of these above items were from the Coral Gables Corporation. The remainder of the proceeds was used for the construction of a storm sewer. In the second issue of April 1, 1926, $450,000; the City secured a parcel 100 feet by 200 feet in Block 34, Section K, a parcel 100 feet by 100 feet in Block 37, Section K, for $300,000; and the pracels shown on the City map as the City Park, approximately 327 by 248 feet, in Block 44, Douglas Section, for $150,000, all bought from the Coral Gables Corporation. The Third issue, of July 1, 1926, for $1,787,000. was used for the construction of streets and sidewalks at the request of the Coral Gables Corporation, and based upon an agreement by them, filed with the City by that corporation, assuming the assessment liens and intended to protect the purchasers of the property from the corporation who had been guaranteed by the corporation the completion of these improvements without cost to the purchasers against the payment of the liens. The liens which were laid for the benefit and payment of the bonds.

Mr. Warren:

We object on behalf of the creditors and move to strike the testimony of the witness as being wholly without the scope of the reference, wholly immaterial to the issues, and going solely to the validity or invalidity of the bonds which have not been questioned either by the City or by the Creditors or any of them, and this answering of these questions just goes to show the entire inapplicability of the testimony sought to be adduced; and consents of the refunding bonds of those issues are admitted to be relied

upon by the City. Further, the testimony is a conclusion of the witness and wholly immaterial, and the refunding bonds have been duly validated by decree of the Circuit Court and by the Supreme Court of the State of Florida, expressly recognizing the validity of the outstanding debt of the City.

Mr. Adams:

I would like to state the purpose of the testimony just for the purpose of getting it in the record.

The Master:

Well, I wish you would, Mr. Adams. I frankly do not see the relevancy of this testimony, but I am going to reserve my ruling. I will say that now. But it will be well for you to state what the purpose is.

Mr. Adams:

This testimony is offered in support of the factual issue before the Court of the fairness and bona fides of the plan of composition which is submitted for approval, the City feeling that the Court cannot judge of the fairness of this plan of composition without having a complete and full history of this indebtedness and what the City secured for the indebtedness, and the part that these items now play in the present financial situation of the City. We believe as the case unfolds, Your Honor will see that they are a definite part of the complete financial picture of the City which we are endeavoring to present.

Mr. Warren:

I am glad Mr. Adams has stated the purpose. Am I to understand that this purpose is to go back of the validation proceedings of the Supreme Court in order to show the present ability of the City to pay?

Mr Berry:

Are we urging here, if the Court please, that the improvidence of a prior administration of the City of Coral Gables entitles the administration to more sympathy from creditors who have bought the bonds in good faith, and the legality of which has been admitted? I think I heard Judge Simons reply to that question just the other day in the Circuit Court of Appeals, when he said that notwithstanding how much sympathy he had with the general creditors, it did not affect the validity of the lien, and no matter how much sympathy you might have with the taxpayer, it does not affect the validity of the bonds, and if it is for the purpose of invoking Your Honor's sympathy and not to affect your judicial decision, I still don't think it is material.

The Master:

I still don't see the relevancy of the testimony, but I will reserve my ruling.

Mr. Barry:

We will stand on our objection to this line of questioning, if that is agreeable, without renewing it.

The Master:

Yes; that's all right.

Mr. Redfearn:

Without the improvidence of a previous administration, it might have resulted in our ability to pay now. And his reference to a bankruptcy case doesn't apply here because while we call this a bankruptcy case, we are here to ask the Court to confirm our plan of composition which was offered in 1937, and which is still open, and on which we—

The Master: (Interrupting):

I have reserved my ruling, and you will have an opportunity to argue it on both sides.

Mr. Redfearn:

The question is the ability to pay, and not the improvidence of a previous administration.

Direct Examination (Resumed).

By Mr. Adams:

Q. Mr. Shaw, what properties were acquired by the City with the proceeds of the January 1, 1927, bond issue? And give the amounts paid for them.

A. Acquiring the golf course and buildings, $1,750,000.

Q. What buildings do you refer to?

A. The small club house building on the course, and the larger country club building across the street. For acquiring the Venetian Pool and buildings, $200,000. The buildings are simply the casino at the edge of the pool. Acquiring the street railway and bus system, $1,782,000. Acquiring the Coliseum building, $300,000. Then there were an additional $500,000. of general municipal purposes, 100 for parks and playgrounds, 100 for fire stations and sites, 50,000 for a municipal emergency hospital and 250,000 for the City Hall.

Q. Mr. Shaw, when did the City first default in its bonded indebtedness?

A. On July 1, 1930.

Q. Describe to the Master the conditions leading up to this default on July 1, 1930; the condition of the City's finances, I am referring to.

A. One of the primary conditions was, of course, the collapse of the real estate boom. Another was the cessation of tax payments by the Coral Gables Corporation, which was by far the largest property owner in the city, representing some 15,000 or 16,000 lots; the prohibitively

high taxes based on the rather fanciful values of the boom time, and still carried forward to a great degree on the assessment rolls.

Mr. Berry:
We object to the witness' conclusions of fanciful values; he can state the facts.

The Master:
I think that objection is well-taken.

A. The high taxes, based upon assessment rolls of as high as $90,000,000.00, which was presumably 50% of the full value, it made it impossible for people to pay taxes upon the vacant land.

Mr. Berry:
I object to that, if the Court please; it is a question of whether they did or didn't pay them.

Mr. Clarke:
I object on the ground that a previous exhibit shows the amount of levies, the amount of valuations, and the amount of collections, and the amount of defaults, and the Master can draw his own conclusion from that exhibit.

The Master:
If there is no objection to the accumulation of testimony, I see no reason to exclude the testimony on the ground it is accumulative. Some of these conclusions of the witness the Master judicially knows to be true, but I don't see that they are doing any harm to anybody.

A. (Continuing) The assessment rolls of the City had been, for the 1925 taxes, $49,184,000; for 1926, $90,810,-350;—

Mr. Lea:

Just in order to save time, the Reporter could copy that off of Exhibit No. 14 which is already in the record.

The Master:

Just a moment. Why can't that be done, Mr. Adams.

Mr. Adams:

That's all right; or Mr. Shaw might refer to the assessed valuations for the respective years, as shown on Exhibit No. 14, and then go ahead.

The Master:

Is that "14" or "13"?

Mr. Adams:

"14".

A. (Continuing) At the time of default, the assessment of $67,000,000. and the tax rate of 23.5 mills produced high and prohibitive taxes on the vacant land, and the great majority of these lots had become delinquent. The City's collectability of taxes had fallen to 33.9% of its tax roll, or $538,604.00, for the total collections within the fiscal year.

The Master:

What year?

A. 1929-30.

Mr. Warren:

We move to strike the testimony of the witness as being immaterial and irrelevant—

The Master:

Let the witness conclude his answer.

A. Let me correct those amounts. That's 40.15%, and $447,103.00.

Mr. Warren:
I move to strike the testimony of the witness because it is too remote to be of any value in assessing and determining the present ability of the City to pay its present outstanding indebtedness.

The Master:
Note the objection.

A. The debt service budget for the same year, 1929-30, was $1,093,803.00, and obviously could not be met from the $447,000 of tax collections and the other minor revenues of the city.

Mr. Warren:
The same motion.

The Master:
Note the objection; note the motion.

Q. What steps were taken by the City, Mr. Shaw, to remedy the defaulted condition?

A. The City at once attempted to locate and notify its creditors, and commenced conferences with the bondholders' committee which was formed by the creditors in New York. This bondholders' committee sent its experts to Coral Gables; Mr. Henry Steffins came for the purpose of making a fiscal survey, and a Mr. Edwards, a New York appraiser, whose initials I don't recall at this time, for the purpose of checking the assessment rolls. The findings of these gentlemen was that the City operating expenses at that time would be properly set at $220,000.00, which was done in the next year's budget.

Mr. Warren:
I move to strike that because it is hearsay.

The Master:
What was that motion?

Mr. Warren:
I move to strike it out because it is hearsay, the findings of the Committee.

The Master:
You move to strike the findings of the committee because it is hearsay?

Mr. Warren:
Yes, sir.

The Master:
Note the motion.

A. I will change that to say that the Committee requested the City, in writing, to reduce its operating expenses to $220,000. in accordance with the fiscal survey, which was done. The Bondholders' Committee and the Commission agreed upon the principle for a refunding of the debt which was to consist of a $4,000,000. bond issue bearing 6%, and for a 40-year term, and the issuance of corporate stock for the difference between the $4,000,000 and the then approved total debt of the City, including past due interest. This corporate stock was to be paid from the proceeds of the liquidation of the delinquent tax and assessment lien assets of the City, and from the net revenues of the city's income—producing properties, which were the transportation system, golf course, Venetian pool and Coliseum, and from the proceeds of the sale of these properties, if sold within the term of the securities.

Mr. Warren:
The same motion to strike.

The Master:
Note the motion.

Mr. Berry:
May I inquire if this was ever adopted, or is this a recommendation or suggestion which never went into effect?

The Master:
Suppose we let the witness conclude and we will find out.

A. (Continuing) The City at that time had had prepared a brief upon the validity of the bonds, and as a part of its agreement with the bondholders' protective committee, agreed to withhold any litigation upon this question so long as the creditors or their accredited representatives should attempt an amicable and fair settlement of the matter, and in turn withhold harmful litigation against the City.

Mr. Warren:
If the Court please, I cannot see the possible relevancy of this testimony, and I object to it and move to strike it.

Mr. Redfearn:
I think they can see it if you will let them develop it; we have to show the background.

Mr. Clarke:
I object to it on the ground that the plan itself would be the best evidence, rather than his conclusions.

The Master:
Note the motions and objections.

Q. Mr. Shaw, was the 1931 plan, as defined by you, submitted to a vote of the freeholders of the City of Coral Gables?

A. It was.

Q. What do the official records of the City show regarding the result of that bond election?

A. That the refunding issue was authorized by the people—by the freeholders.

Q. Was or was not that plan consummated?

A. It was not consummated.

Q. Why was it not consummated?

A. In 1934 the plan was rejected because of the further aggregation of depressed conditions, and of the downward trend of the city's affairs. The tax collections, which had been $447,103.00 in the year preceding the plan, that of 1929-30, had shrunk to $222,357.00 in the year 1933-34, 45% of the roll that had been greatly devaluated in an attempt to stem the increasing delinquencies. The vacant property was even more delinquent, as to number of lots at that time, than it had been before the default. And also, the Commission of the City had recognized the impossibility of carrying the $240,000. interest charge per annum that the refunding bonds would carry.

Q. Did the City, in 1934, take any steps to determine its ability to pay its indebtedness?

A. It did. In 1934 the City employed Dr. Thomas H. Reed, Director of the Municipal Consultant Service, to survey the affairs of the City and report upon the probable capacity to pay. Mr. Reed in turn employed John C. Donehoo, the then tax assessor of St. Petersburg, Florida, to study the value of the taxable property in the city. Dr. Reed's report showed a recommendation for a $210,000. operating expense, and the statement that the City's then debt service ability was approximately $74,000. per year, including the collections of both current and delinquent taxes as means for their payment.

Q. Did Dr. Reed prepare a report to the City?

A. He did.

Q. Can you identify this printed pamphlet as Dr. Reed's report? (Handing instrument to witness.)

A. That is the report, and bears his facsimile signature. I have the original report in my files.

Mr. Adams:

We would like to have that marked Exhibit 18 for Identification.

Mr. Berry:

I object to that, if the Court please; it is irrelevant and immaterial.

The Master:

Note the objection.

(Instrument marked Petitioner's Exhibit No. 18 for Identification).

A. Continuing with the same answer, Mr. Adams, Dr. Reed's report as to the value of the taxable properties in the city, based on the survey by Mr. Donehoo, showed a total value for vacant lands of $3,356,000., approximately, against a previous tax roll of $18,471,000.00.

Mr. Watts:

If the Court please, may I make this observation and object to the testimony, and ask the Court to strike it on this ground; it is immaterial and irrelevant, and has no bearing here, and if it is to be considered by the Court as relevant, it is certainly incorporated in the report marked for identification. Now, if the Court please, the witness is simply arguing to this Master the report of which Your Honor will get arguments on in due course by

the respective counsel, and will consider and draw your conclusions on. Now, if we are to take a lot of time on that sort of thing, why can't we just go ahead and get the original records up here and take a little time looking at those. I can't see why Your Honor should be called upon to listen to a lot of argument by the witness, and still we don't have time to get the original records up here, and I don't believe either should be; and I move this testimony be stricken and the witness instructed not to give his conclusions and his arguments respecting reports or any other data Your Honor has before you, or any other data you will have before you, and especially those that are not used.

Mr. Clark:

And for the further ground it is hearsay twice removed.

Mr. Watts:

The witness is not supposed to make arguments to Your Honor; counsel will probably make more arguments than you want to hear, and you will probably get tired of hearing us before we get through with this case.

The Master:

Well, the Master can only admonish counsel to try to avoid swelling the record with any more than necessary, but I will not at this time rule out the testimony. The decision is reserved.

By Mr. Adams:

Q. Mr. Shaw, during the years 1931 through 1934, will you please explain what official connection, if any, you had with the studies of the assessment roll of the city and the financial conditions, made by these experts that you have referred to?

A. I worked closely with Mr. Henry Steffins and rendered him a report for his study and conclusions, and was side-by-side with him in his studies of the situation on the ground. I also worked rather closely with Dr. Reed at the time of his survey, and with Mr. Donehoo when he was employed to make a complete reappraisal of the vacant lands in the city and to assist and advise the tax assessor in a full re-appraisal of all of the improved properties in the city.

Q. Are the assessment rolls of the city now founded primarily upon that basic study and report of Mr. Donehoo?

A. They are. Mr. Donehoo's principles and his valuations were adopted by the city in the tax roll for 1936, and since that time the methods—the scientific methods laid out by him, have been employed by the city in all the rolls subsequent to 1936. I might say that Mr. Donehoo is a nationally known assessing authority, and has been President of the National Assessors Association, and has recently concluded a complete re-appraisal for Miami. He is a thoroughly accredited man.

Q. Was any plan of refunding developed as a result of the City's studies in 1934?

A. Yes.

Q. When was that plan perfected?

A. In 1935, renewed conferences between the bondholders' protective committee and the city, based upon the facts which had been developed, resulted in another tentative debt settlement plan.

Q. What was the total amount of refunding bonds which were to be general obligations proposed in that settlement?

A. $4,000,000.00, as in the first case, but now with interest rates staggered upward from 2% at the beginning to 5%, and with a provision for 40-year bonds, to be retired periodically through the operations of the sinking fund, as in the first case.

Q. What other evidences of debt were proposed to be delivered to the creditors to supplement those general bonds?

A. The exact nature of those evidences was never fully determined. The plan underlying them was to transfer in escrow to the creditors—a corporation or trust of the creditors all of the delinquent taxes and assessment liens and any lands—the titles to any lands acquired in the enforcement of the taxes and assessment liens, a great many of which were then under foreclosure; and also, the transfer to that same agency of the creditors of the net proceeds—

(Note: At this time the witness was interrupted by the appearance at the hearing of Judge Mitchell D. Price, on behalf of one of the creditors herein, and a discussion was had, off the record, between Judge Price, the Master and counsel present.)

Judge Price:

I would like to have the minutes here note my appearance, and my offer to produce the bonds. The bank is closed today, and we can't get them in here; they are in a safety deposit box at the bank.

(At the conclusion of the above statement, Judge Price retired from the hearing, and the witness proceeded with his answer, after having the same read to him by the Reporter.)

A. (Continuing); as I said, the transfer to that same agency of the creditors of the net proceeds of any sale of the previously mentioned income-producing properties of the city during the term of the securities.

Q. What tax liens were then involved in litigation?

A. Those for the years 1928, 1929 and 1930, and all of the balances of the city's street and sidewalk assessment liens.

Q. Do you know the approximate total amount of the street and sidewalk assessment liens involved in that litigation?

A. I have the figure here for June of 1936, $1,400,149.00.

Mr. Clarke:

Of what?

A. The June 30, 1936, unpaid balance of the street and sidewalk assessment liens.

Q. What was the total amount of the 1928, 1929 and 1930 general tax liens which were involved in the suit?

A. The balance on that same date was $1,835,097.00.

Q. What was the result of that litigation?

A. Both cases were lost in the Supreme Court of Florida.

Q. And are the liens now carried on the books as book assets of the City, or have they been canceled to conform to those orders of the Court?

A. They have all been canceled to conform to the Court's orders, removing $3,235,246.00 of the 1936 value of the city's assets.

Q. After those decisions, what if any effect did that have upon the negotiations then pending with creditors for refinancing?

A. The bondholders' protective committee rejected the so-called 1935 plan which I have last described, since the loss of these assets had fundamentally destroyed the plan. The city was at the same time objecting to the provision in the plan for an increase of the interest rate from two to five per cent. in ten years, and would have rejected the plan had it not been modified. If it were not modified, let me say.

Q. Were negotiations continued in 1936 to arrive at a plan of refinancing?

A. They were.

Q. Was the Ordinance 269, Exhibit 6 in this testimony, the ultimate result of those negotiations?

A. It was.

Q. Who proposed, in the negotiations, the plan of tax participation certificates included in this Ordinance 269?

A. That proposal originated from the bondholders' protective committee as being a substitute for the previous provisions in the several plans to turn over, either directly or indirectly, the delinquent assets of the City to the creditors. The bondholders committee was at that time unwilling to take over the assets which had been reduced in value and placed in considerable doubt by the findings of the Supreme Court, in the assessment lien and tax foreclosure cases. They proposed, instead, a plan by which accrued minimum tax rates would service the fixed securities bearing interest, and to be retired in their face amount, and would produce some surplus of collections which could be paid to the creditors in lieu of the difference between the amount of the fixed bonds and the total accrued debt.

(At this point there was discussion had, which was off the record.)

Q. Now, Mr. Shaw, this plan of refunding under Ordinances No. 269 and No. 289, was as of January 1, 1937, was it not?

A. That is correct, sir.

The Master:

Mr. Adams, will you identify those ordinances by the exhibit numbers?

Mr. Adams:
No. 269 is Exhibit No. 6 and No. 289 is Exhibit No. 9.

Q. Will you refer to Exhibit No. 5 and explain from it the financial necessity for a refunding because of the then status of the indebtedness of the City?

A. Exhibit 5 shows on the second page a total accrued debt of the City as of January 1, 1937 of $11,182,606.36. Of this, there was in default $2,586,073.90 of principal and $2,793,532.46 of interest, or more than half of the accrued debt. The assessed valuations for 1936, the year immediately preceding, and the latest valuation that was then in existence, were $22,719,168.00, of which the accrued debt was 49.22%; the debt per capita was $1,597.29, based on the 1935 State census. The average per capita of 40 Florida cities for 1930 was $284.00.

Mr. Lea:
I object to that; it is hearsay.

Mr. Warren:
That is in addition to all the other objections we have to this line of questioning.

The Master:
Note the objections.

Q. Mr. Shaw, have you made any study of the official census reports of the United States for 1930 and 1940, and of the State of Florida for 1935? The State of Florida census?

A. I have.

Q. Have you secured from those official reports the figures regarding the per capita average debt of cities in Florida and cities in the United States?

A. I have.

Q. Please state what is the average per capita debt of 40 Florida cities, according to the 1930 census.

Mr. Warren:
We object to that, if the Court please; it is entirely hearsay.

Mr. Lea:
It doesn't even state what 40 cities they are.

The Master:
That objection is overruled.

A. $284.15.
Q. What is the average per capita debt for 250 cities in the United States over 30,000 population in 1930?
A. $192.52.

Mr. Clarke:
Did he get all this information off the census reports?
A. The census reports as published by the Department of Commerce, and statistics of cities.

Mr. Lea:
Have you got that before you?
A. I have not. I can secure it.

Mr. Lea:
I think that would be the best evidence.

Q. What was the 1935 Florida cities between 5,000 to 20,000 per capita debt?
A. $327.44.
Q. What was the per capita debt of all Florida cities, according to the 1935 census report?
A. $230.04.

Q. And of the Florida east coast cities?

A. $309.94. I might say, Mr. Adams, that those latter figures as to all Florida cities and east coast cities were taken from the survey of Florida municipalities made by Mr. Milton Fuller, under, I believe the State Planning Board which sponsored that. Mr. Fuller is present and he can verify those figures, as he produced them.

Q. Mr. Shaw, immediately following January 1, 1937, at which time you have given the status of the defaulted principal and past due interest indebtedness of the city, what were the accurals facing the city in that year?

A. The annual interest accrual was $501,335.98, and in addition there was accruing interest on past due interest, $166,775.00.

Q. What were the principal maturities of the immediate future?

A. In the six months immediately following January 1, 1937, $414,000; and then in the fiscal year 1937-38, $427,000; 1938-39, $479,000; 1939-40, $279,000; 1940-41, $288,000; 1941-42, $304,000; 1942-43, $327,000; 1943-44, $327,000; and I have not carried them on here in detail, Mr. Adams.

Q. Now, using the 1936 assessment roll valuation, what was the millage necessary to pay the annual interest accruing during the year 1937?

A. That is, using the 1936 value?

Q. Yes.

A. Based on the 1936 value, it would have been 31.26 mills, or $31.26 per thousand.

Q. In the year 1936, what basis of valuation was used in the preparation of the assessment roll?

A. I will have to refer to that, Mr. Adams. (Examining document.) That was 100%.

Mr. Clarke:

Is that 36-37, or 35-36?

Mr. Adams:

36-37; it would be the '36 assessment roll for the fiscal year 36-37.

Q. What was the total amount of the assessment roll for the tax year 1937?

A. $23,684,018.00.

Q. And what millage on that total assessed valuation would have been required in that year to pay the principal and interest on the then outstanding bonds?

A. 39.19 mills, or $39.19 per thousand.

Q. On the basis of the collectable roll for the fiscal year 1936-37, what would have been the required millage levy for interest, and for interest on interest?

A. The millage for the accruing interest would have been 31.26; for interest on interest, 10.63; a total of 41.89. I want to call attention to the fact that that is on 100% value, and it would be the equivalent of 160-some-odd mills in accordance with the assessments of Dade County and some of the cities—many of the cities of this area.

Q. Mr. Shaw, how much of the total principal indebtedness was affected by the modification of the plan by Ordinance 289, which is Exhibit 9 herein?

A. $165,733.89 of principal, and $36,723.81 of interest, or less than 1% of the total of the debts to be refunded.

Q. And I believe that ordinance was adopted in September of 1937?

A. That is approximately correct, Mr. Adams.

Q. Well, it shows that itself.

A. The ordinance will show the date.

Q. Now, Mr. Shaw, when did exchanges under this voluntary refunding plan commence?

A. In the fall of 1937, immediately after the adoption in the change of the plan under Ordinance 289.

Q. Now, have you made up a certificate showing in table form the status of those refunding exchanges as of

June 30, 1940, with an addition thereto bringing it down to the date of January 18, 1941?

A. I have, Mr. Adams; I have it before me.

Mr. Adams:

We will offer that in evidence as Exhibit No. 19.

(Instrument marked in evidence as Petitioner's Exhibit No. 19.)

Q. Mr. Shaw, explain, please, the basis of the column of figures under the column headed "bonds" and "bond interest"; how that is arrived at, and is interest as of what dates, in this Exhibit No. 19?

A. This is a statement to measure the refunding. Now, the refunding cannot be measured by taking the amounts which were due at the time of the exchange of any of the old securities or the amounts that may now be due on the unrefunded securities, or those in judgment. As a yardstick, we have taken the accrued value to January 1, 1937, which was the date of the refunding, and which was the value of all of the securities which have to date been refunded. We have measured the judgments and mandatory levies, and the unrefunded original bonds in terms of their value on January 1, 1937, in order to compare directly with those which have been refunded. In that way, all of the figures in the "bond interest" column are as of January 1, 1937, and so are the figures in the other debt interest column. Now, on the other judgments and mandatory levies, that takes into account such interest included in those judgments which would have been refundable had it been presented for exchange. As to the principal, of course, the figure of $146,000.00 for judgments and mandatory levies includes all of the bonds which were in those judgments, at par value. As to the unrefunded bonds, the same thing is true, and the interest there is also taken only to January 1, 1937. There is out-

standing and shown in other statements the accruals of interest and the exact balance as of June 30, 1940, and I believe a more recent date on these items; but only by establishing the common yardstick can you compare the progress. In that way we have in the beginning the amount which would have been refunded had the entire plan been effected, 100%. Then we have the amount which would have been refunded, then, on the incomplete items which are still outstanding.

Mr. Warren:
Do you offer that?

Mr. Adams:
We offered it as Exhibit No. 19.

Mr. Warren:
We object to that because it is immaterial and it does not present any evidence of the present ability of the City of Coral Gables to pay its present outstanding debt.

Mr. Clarke:
Or of its ability at the time of the filing of the petition.

Mr. Lea:
I object to it on the further ground that the statements in it do not conform to the allegations made at the top, in as much as this is not a statement of progress of refunding.

Mr. Warren:
And that it does not show the present status of the debt.

The Master:
Note the objections.

(The instrument, having theretofore marked by the Master, was filed in the record as Exhibit No. 19.)

Q. Now, Mr. Shaw, during the year 1938, and the year 1939, what if any efforts were made to secure voluntary exchanges with the holders of old bonds and coupons of the City?

A. Several conferences were held between the City Commission and the owners or representatives of the unrefunded bonds and interest coupons, and terms of some reasonable settlement of the matter were discussed, but in no case could any understanding be reached which was within the ability of the City, or reasonable or just in the light of the refunding plan.

Mr. Warren:

I move to strike that conclusion of the witness.

The Master:

Note the motion.

Q. Was there any bond litigation in 1939?

A. Yes, sir.

Q. Or 1940?

A. Yes, sir.

Q. When was that instituted, and what was the nature of it?

A. A suit was filed by the American National Bank of Nashville, Tennessee, in December of 1939, which if successful would have reached and tied up the funds which were then on hand and which had been levied expressly for the purpose of paying the interest and service of the other refunding bonds, and would have produced a default on those refunding bonds.

Q. Were the refunding bond coupon maturities or interest maturities of January 1, 1940, paid by the City?

A. Yes, sir; the money had been sent to the New York trustee-bank prior to the filing of the suit, and it was only for that reason that the interest was paid.

Q. Mr. Shaw, have you prepared from the original records of the City a statement showing the balance due on several judgments against the City which are now being paid or upon which judgments there now exists mandatory writs for tax levies which will give the total amount due on those several judgments as of June 30, 1940, and the amount which will be due upon them according to the several spreads in the various writs for interest and principal for the fiscal year 1940-41, and through the last year in which they should be paid in full?

A. I have, Mr. Adams; I have such a schedule here.

Mr. Adams:

We will offer this schedule in evidence as Petitioner's Exhibit No. 20.

(Instrument marked in evidence as Petitioner's Exhibit No. 20.)

Q. Have you prepared a schedule showing the total amount of original bonds of the City, with the statement of the principal amount past due as of June 30, 1940 and the interest past due as of June 30, 1940, and the dates of maturity of the other bonds with the amounts of the several maturities, being the details of the presently outstanding old bonds of the City of Coral Gables?

A. I have, Mr. Adams; I have such a schedule here.

Mr. Adams:

We offer that in evidence as Exhibit No. 21.

Mr. Clarke:
These do not include the mandamus judgments, do they?

A. No.

(Instrument marked in evidence as Petitioner's Exhibit No. 21.)

Mr. Adams:
The No. 21 does not include the Mandamus judgments. These are bonds and coupons which have not been placed in judgment. And Exhibit 20 is the total balance due on the judgments upon which there are peremptory writs for spread levies, with the maturities due under those several spread levies in the current fiscal year, and those following.

Mr. Clark:
I see.

Mr. Adams:
Senator, I see it is about quarter of five. There is a rather definite break in Mr. Shaw's testimony at this point. Up to now we have covered history and are now ready to go into another branch of the testimony to show our ability to pay this outstanding obligation, which might be a point of division if you are anywhere near ready to adjourn.

Mr. Lea:
If Your Honor please, I believe at the last hearing you told us you would give us written orders on any of these points we had raised so we could take advantage of these rulings, if necesnary.

The Master:
Yes.

Mr. Lea:
We have some motions here to present, and I would certainly appreciate it on these motions I am arguing at this time if you would give us a written order so I might take them before the Court, if necessary.

Mr. Warren:
You can make a report to the Court on them.

Mr. Lea:
Yes.

The Master:
Well, now, before you go into that, did you say you have a brief on it? (Referring to an off-the-record discussion previously had.)

Mr. Lea:
Yes, sir, I do.

The Master:
Suppose you let me have your brief, and give these gentlemen a copy of the brief.

Mr. Lea:
I don't have but two copies of the brief.

The Master:
Well, I guess they can get their heads together on that.

Mr. Adams:
Is this the matter they were to submit the memorandum on?

The Master:
Yes.

Mr. Adams:
Well, we have never gotten it.

The Master:
He is now submitting a brief, and one copy to your side.

Mr. Lea:
Now, I am submitting that brief, and also at the same time I understood from Mr. Redfearn we are taking up the objections to these claims. They are on the same motion. Now, if we are going to argue that at this time, I would like to be heard on it.

Mr. Redfearn:
Well, I was just inquiring. I didn't understand which were the matters to be taken up. We had one matter left over, but as I recalled, they were to file a memorandum on that; that was left over from the last hearing.

The Master:
That is this motion, isn't it?

Mr. Lea:
That is this motion.

Mr. Redfearn:
No; this motion hadn't been filed at that time; this motion is the outgrowth of that situation.

Mr. Lea:
Yes; and at the same time we brought up the question of objections to a group of claims that were filed on December 12th. We had not objected to those claims, nor

had we objected to some of the others which we claim do not comply with the Act, so we have now filed objections raising legal points to those claims, and that is the point raised in this brief. Suppose I take those objections and the motion out of the file and segregate them so you will see what is before you?

The Master:

Well, the point was, I asked you to file a written memorandum.

Mr. Lea:

I have that.

The Master:

I want to have that and go over that, and the other side's memorandum, too, before I hear the argument.

Mr. Redfearn:

Well. we have had no opportunity to prepare ourselves on it.

The Master:

You still have to prepare yours?

Mr. Redfearn:

Yes.

The Master:

All right, give them your brief, Mr. Lea, or a copy of it, and they can give you a copy of theirs.

Mr. Redfearn:

What they are filing now is a new motion, and objections to claims, which at the time of the last hearing wasn't prepared.

Mr. Lea:

Yes, we are filing a motion here today in which we ask they be required to file their bonds. I would suggest we set a date to hear these arguments, and have a ruling on it.

The Master:

I will set a date, but give me your brief now, and I want the other side to have a chance to present their brief.

(Thereupon, at 4:45 P. M. the hearing was adjourned. It was thereupon agreed that the hearing to be had on the next day would be held in the offices of Redfearn & Ferrell, 1202 Alfred I. duPont Building, Miami, Florida, at 10:00 o'clock A. M.)

Thereupon, at 10:00 o'clock A. M., on January 21, 1941, the hearing in the above cause was resumed, and the following proceedings were had. The appearances of counsel at said hearing were the same as noted at the opening of the hearing of January 20, 1941, excepting for Mr. Olin Watts, who did not appear.

(An off-the-record discussion was had relative to the course of the procedure, and it was finally determined that the Motion filed before the Master on the previous day would be heard and arguments presented thereon.)

The Master: (After examining Motion):

It is clear from this Motion that you are objecting on the ground that the bonds were not filed with the consent and proof of claim. Is there any other objection?

Mr. Warren:

So far as the motion is concerned, we either want them to be disallowed, or for them to be forced to file their bonds with the claims.

The Master:
I understand; but are there any other objections other than that the bonds were not filed with the claims?

Mr. Lea:
Yes, sir, Your Honor; I will briefly review the points.

Mr. Warren:
The objections to the claims are also involved.

Mr. Lea:

On the same point we have objections filed to each and every claim filed after August 26th, 1940. We have objections filed to each and every claim which was filed by a claimant in a representative capacity which has not complied with the Act in attaching to that proof of claim the authority of that representative to act. That takes into account various claimants who are particularly listed in the objections, among them being receivers, trustees, executives, trust officers, and so forth. We have objected to each claim that was filed on December 12th, claiming that any creditor who has filed a proof of claim after August 26th has no right to participate in these proceedings either as a consenting creditor or as a dissenting creditor. I will briefly review the factual situation before the Court. (Thereupon, reviewing the history of the case, as set forth in the memorandum brief filed in connection with the Objections to Claims, etc. Following the above, the argument of the law here involved was presented by Mr. Lea, as contained in said memorandum brief, together with interpolations.)

(Following the argument presented by Mr. Lea, a response thereto was presented by Mr. Redfearn, during the course of which the following occurred):

Mr. Clarke:

I would like for the Reporter to take down the statement of Mr. Redfearn that "these creditors are not to be affected by this proceeding".

Mr. Redfearn:

These creditors are not affected by this proceeding whatsoever if it is dismissed under the plan that opposing counsel is advocating here now, that the failure to file proofs of claim to which the original indebtedness is attached, makes the claim invalid, and therefore the whole bankruptcy case should be dismissed. In the event it is dismissed, then of course no claim is affected, but if it is not dismissed, every creditor is bound by this bankruptcy proceeding. (Following this statement, further argument was presented by Mr. Redfearn, which was off the record.)

(Following the above, Messrs. Haycock and Adams presented short arguments in connection with the foregoing matter, and these arguments were responded to briefly by Mr. Lea.)

The Master:

Well, Gentlemen, I am ready to rule, if you want me to. Judge Holland has expressly provided that there shall be no requirement for these securities to be filed at that time, and I am unable to see that there is any changed condition which would justify the Master in ruling that they are to be required at this time, and I certainly cannot undertake to overrule the Judge. The Motion will be denied.

Mr. Lea:

You are not ruling on our objections to the claims, are you at this time?

The Master:
No; I haven't heard those.

(Short argument presented by Mr. Redfearn as to the Objections to Claims, which was off the record.)

Mr. Lea:
Your Honor, would you give me a separate order on that ruling?

The Master:
Yes. Will you prepare an order and submit it to me?

Mr. Lea:
Yes, just a report on it. May I inquire if your ruling covers only the point of attaching the bonds?

The Master:
The ruling covers this whole motion, the Motion to disallow, and the Motion to require the production of the bonds.

Mr. Lea:
I understand your ruling on that is that Judge Holland has already ruled on that point, and you deny the motion.

The Master:
Well, the ruling is I deny the motion. I just gave my reasons here, and I don't think it is necessary to put that in the order.

Mr. Lea:
All right; I will just draw up the order that the motion was denied.

(At this juncture of the proceedings an off-the-record discussion was had relative to the taking up of the Ob-

jections to Claims filed on behalf of objecting creditors; counsel for Petitioner objected to proceeding with the argument thereon because sufficient notice had not been given to the interested parties, in connection with which the Master made the following statement, to Mr. Lea:)

The Master:

Certainly you haven't given them sufficient notice; we better let this argument go over until some future date.

412 Thereupon: G. N. SHAW was recalled on behalf of the Petitioner, and being still under oath, further testified as follows:

Direct Examination (Resumed).

By Mr. Adams:

Q. Mr. Shaw, does the City now have any tax sales certificates evidencing delinquent taxes against properties in which there is included amounts of taxes levied for the benefit of the January 1, 1937, bond fund?

A. It does, Mr. Adams.

Q. State what those total balances, which, when, as and if collected will go into the January 1, 1937 fund for the benefit of the bonds and tax participation certificates under the plan, amount to.

A. As of June 30, 1940, the City's records showed $52,486.64 of tax sales certificates and delinquent taxes, or rather, the portion thereof applicable to and to be paid when, and as, collected, to the service of the refunding issues.

Q. Now, do you have the totals which accrued and began to bear interest in the different years prior to 1940?

A. From this statement I have before me, I can't give it to you in exactly that form. However, on June 30, 1938,

there was $28,350.58 of such portions of tax sales certificates applicable.

Q. Now, does that amount, under the law, bear interest at the Statutory rates?

A. It does.

Q. Now, any other accruing defaults, and the date they accrued.

A. On June 30, 1939, the then total including both the tax sales certificates for the tax year 1937, and the tax sales certificates for the year 1938, was $45,610.79. That is the remainder after crediting those paid, and applying the monies from those payments to the proper debt service funds. The same is true of the figure that I have quoted for June 30, 1940.

Q. When will there be any new accruals of delinquent taxes in the form of tax sales certificates?

A. The tax sale for the tax year 1940 will be held on the first Monday of June, and the amounts unpaid at that time will be converted into tax sales certificates, and commence to draw interest.

Mr. Adams:

That's all on that. Now, it is still a few minutes to twelve o'clock, and I have something I want to take up, Mr. Master. There was so much argument and discussion and exception yesterday as to the materiality and relevancy of the testimony, and as we understand this proceeding, regardless of whether there is an issue of fact in the pleadings—

The Master:

Now, are you going to argue the question?

Mr. Adams:

No; I am stating the purpose of the testimony as a preliminary statement, and it is as a preliminary statement

as to the line of testimony we propose to offer this afternoon, and just a statement of what the law requires.

The Master:

All right; proceed. The Bankruptcy Act, in Section 83-E, requires the Court to make a finding that the plan of composition submitted is fair, equitable, and for the best interest of the creditors, and does not discriminate unfairly against any creditor or class of creditors. Now, that involves facts, and the testimony we will propose this afternoon will be in support of those facts. It will be offered in support of the finding the Court must make that the offer of the plan and its acceptance are in good faith. Now, much of the testimony offered yesterday is in support of that fact. And, that the Petitioner is authorized by law to take all action necessary to be taken by it to carry out the plan. Now, that has been offered in the form of the Opinion of the Supreme Court of the State of Florida, and the Ordinances. These other two facts we think—and which must be passed upon by Your Honor—necessitate the line of proof which we will offer this afternoon in a study of this plan, its effect and fairness upon the creditors and the taxpayers.

The Master:

You want to proceed with Mr. Shaw this afternoon?

Mr. Adams:

Yes; we will proceed with him this afternoon.

The Master:

All right, we will adjourn until 2:00 o'clock.

(At this time, the hour of 12:00 o'clock noon having arrived, the hearing was adjourned until 2:00 o'clock P. M., for the further hearing of this cause.)

Thereupon, at 2:00 o'clock P. M. the hearing was resumed, and the following proceedings were had:

Mr. Adams:

We will some evidence now to show the basic facts and principles upon which this plan of composition is founded, and to show certain factual elements which limit and control the various detailed provisions of the plan. We propose to show as the first factual premise of the plan, 100% assessed valuation of property which is taxable to service the bonds, what that present total assessment roll of the City is, the estimated growth of the City in the future which will determined the increase of that assessed valuation, and demonstrate by experience of the City and the demands of the plan that it is essential if the City is to service this bonded indebtedness without default in the future that there be substantial increase in the assessment roll, or in other words, substantial growth of the City. Another element of the plan is the minimum debt service millage which the City is obligated to make under this plan for the benefit of the tax participation certificates after the servicing of the general refunding bonds. We propose to show that because of the location of Coral Gables in the Miami area of Dade County, among fourteen other municipalities offering building sites and varying degrees of advantage to the newcomers to the community, that there is a competitive situation which places a limitation upon the taxing power of the City if it is to be kept within a limit that will permit the City to grow and meet this competition in the other towns. We will show the necessity for the benefit of the creditors of the adequate maintenance and operation of the presently existing municipal functions, show the present depreciated and run-down condition of the City's streets, bridges, parks and parkways, which results from a lack of adequate expenditures in the past in their maintenance, and the importance

to the creditors and the growth of the town of proper maintenance of these functions, and the almost certain necessity in the future of the City's making additional capital expenditures in order to keep its facilities in line with municipal development. And, as a final element, that all of these facts create a definite limit beyond which the City cannot go in the levying of taxes if it is to have a reasonable chance at growth and servicing these bonds in the future, and we will offer evidence showing or tending to show that that debt limit has been reached.

417 G. N. SHAW was recalled as a witness on behalf of the Petitioner, and being still under oath further testified as follows:

Direct Examination (Resumed).

By Mr. Adams:

Q. Now, Mr. Shaw, I believe you testified that you had been an official of the City, familiar with and studying and working on the debt and financial problems of the City from somewhere around 1931. Is that correct?

A. That is correct, Mr. Adams. I believe the only actual testimony I made as to that was that I had been studying these problems intensely for the last six months, but I will now say that that study has gone on since shortly after our default in 1930.

Q. State whether or not in 1930 and '31 you worked with Judge Vincent D. Wyman in the development of the '31 plan.

A. I did.

Q. On what angles of that work did you interest yourself?

A. The financial angles in relation to the taxation of the City, largely.

Q. From then on out, did you participate in a similar manner in the studies and development of the proposed plans and finally the working out of the present plan of composition?

A. I did.

Q. During these years from 1931 down to date, state what if any contacts and conferences if any you had with experts employed by the City and by creditors to study these various problems.

A. Well, the conferences were many. They were with specifically, Henry Steffins, Dr. Reed, Mr. Hoyt, Mr. Donehoo, whom I have named here, together with many municipal finance officers, both of this State and other states at the National and State conferences.

Q. National and State conferences of what organization?

A. Of the Municipal Finance Officers Association.

Q. State whether or not during these courses of years you have compared these studies and principles to the actual experience of the City of Coral Gables.

A. Since 1935 all our attempts to predicate the settlements of the City have been upon the basis of the growth and development of the City, with the recognition of the fact that the City in its present state could pay only a very inconsiderable fraction of the debt, and that growth and development was the fundamental factor in any settlement which would give a substantial return to the creditors.

Q. As to the growth of the City, what facts have you had before you, and what basis of growth have you used in making those studies?

A. The length of the life of the City is short, and the experience, of course, is limited. The City was incorporated in 1925. The first official data as to population was that of 1930, the federal census. The next was the Florida State census of 1935. At this time we have also the 1940 Federal census. From those figures and from the

studies in the increase in the number of buildings, and assessed value, we have devolved a theory of the possible future growth of the City, which theory we do not make as a prediction but as a possibility. The years that I have mentioned, particularly the last ten years which is the principal basis of the study, have been unusual years. The first five of them were depression years. The last five, from 1935 through 1940, were in a sense boom years. The general average of growth over those ten years has been very close to 3.5% per annum.

Mr. Clarke:
Is that in population, or building?

A. That is in population, and the other factors, so far as we can definitely ascertain them. We are limited to a shorter period on assessed values because of the downward trend of assessed values, and because of the fact that there is no possibility of a direct comparison.

Q. Let me ask this question as to assessed value right there. Are the present assessed values on the same basis as the assessed values for the first five years of the City's history, from 1925 to 1930?

A. No.

Q. And that destroys any value of comparison with them?

A. That's correct.

Q. Now, Mr. Shaw, was this basis of 3.5% of annual increase of population used in the sales talk or statements to creditors during the accomplishment of the partial refunding?

A. It was. Mr. Adams. I was going to continue and say that we do not make this as a prediction. We adopt this 3.5% factor simply because it would be obviously unfair to the creditors to predicate the plan upon a less growth rate than that which had been experienced. Now, the

national growth rate is declining. During the last ten years it was but 7.2%; 3.5% per annum would produce 41% over ten years. Our estimate is greatly over the national growth rate, and we doubt that it can continue to remain so throughout the forty year term, but as I said, we have made the predicate upon the basis of the past, and attempt to show what will transpire if the experience of the past is carried on. And I will go ahead now with the answer of the question. As I said, Mr. Adams, we made such studies from 1935 on. Upon the determination of the terms of the 1937 plan, a study was made based upon the 3.5% growth rate factor, and the then existing factors for population, assessed values, etc., so as to show the possible operations of the plan and returns to the creditors.

Q. I believe you also answered that the 3.5% growth rate was part of the prospectus exhibited to creditors?

A. That's right.

Q. Mr. Shaw, have you, using this growth rate basis and the actual experience for the City during the life of the voluntary plan, made a chart projecting this into the future to show the results in terms of money available for creditors over the life of the plan?

A. I have, Mr. Adams. The first estimate in 1936 was, of course, all estimate, except the known figures for the year 1936 upon which it was based. Within the past six months I have restudied the plan incorporating in the estimate the actual figures for the years 1936-37 through 1939-40, and the figures of the preliminary assessment roll, and the 1940-41 budget estimate, and for the years 1942-43, and all subsequent years to 1976-77; I have estimated figures on the basis of the 3.5% factor.

Q. Well, just go ahead and explain the principles and the basis of this study in all of its phases.

A. I have the study before me and will tender it.

Mr. Adams:

We will offer it for identification as Exhibit 22, and make our tender into evidence at the conclusion of the testimony.

Mr. Warren:

May I ask a question before you proceed to interrogate the witness?

Mr. Adams:

Yes.

Mr. Warren:

Is this predicate which you have laid, Mr. Shaw, laid on the basis of what's happened prior to the issuance of the bonds of 1937?

A. I may not understand you, Mr. Warren. Do you mean the predicate of the 3.5% factor?

Mr. Warren:

Yes.

A. Yes, sir.

Mr. Warren:

Then I move to strike all the testimony heretofore adduced since the opening of this hearing relating to his studies, and object to the introduction of this present exhibit or any evidence adduced from the exhibit, because it does not reflect a study of the condition as it existed at the time of the filing of the petition or at the present time, and it is wholly irrelevant and immaterial.

By Mr. Adams:

Q. Mr. Shaw, does this exhibit in the lines indicated in the left hand or "A" column, and headed "Fiscal Year" 1936-37 and 1937-38, and 1938-39, and 1939-40, does the data in all the other columns opposite those lines reflect

the actual conditions and actual figures in the records of the City?

A. It does.

Q. And that brings it down to the latest date that there are figures of experience in the City?

A. That is correct.

Q. Is the period of years over which you took the average of population growth,—what is the period of years, the first and last years?

A. 1930 to 1940.

Q. Does that include part of the life of the existence of this plan of refunding?

A. It does.

Mr. Adams:

All right. (To the Master) I wanted to complete his testimony regarding that objection.

Mr. Warren:

I want to renew my motion to strike on the further ground that Mr. Shaw is not an expert, and Florida is a resort community and not comparable to the rest of the country, that on account of the War situation we anticipate that there will be a lot of travel down here that we haven't had in the past which obviously hasn't been taken into consideration by Mr. Shaw.

The Master:

Is that all, Mr. Warren?

Mr. Warren:

Yes, sir.

The Master:

That motion will be denied.

Q. Now, Mr. Shaw, will you, referring to this Exhibit 22, explain it, and what it means?

A. I think it would be best to start by explaining and verifying the 3.5% growth rate advance which is the principal supposition of the plan. In 1930, the Federal census showed our population as 5,697. In 1935 the State census showed 6,747. A 3.5% advance through those years would have produced a theoretical population of 6,765, or an error of only eighteen persons. Continuing to the 1940 Federal census, we find a population of 8,138, and the theoretical advance would have produced 8,033. The error there is 105 persons, or 1.3% of the final population. With that confirmation of the factor which we had adopted in our preliminary studies of the plan, we carry on the studies shown of the advance of the amounts or values, or the several items shown on this page. We show, for instance, in the second column the number of vacant lots in the City. The first two figures are actual. We have not shown the years 1937-38 and 1938-39, because we have not analyzed those rolls. We have only analyzed the beginning and ending points of our actual experience. In this vacant lot column, the number of lots represents those in the subdivided, high lands of the City, and does not include the low lands of Biscayne Bay Section, Part One, which is subdivided on this paper but which consists of mangrove swamp, or the acreage in the southern portion of the City and on the Keys. This acreage approximates 4,287, and the actual number of subdivided lots in the City is 24,894. We have expressed it here in terms of fifty foot lots for the purpose of giving a clear picture of building sites and of making comparisons with other communities.

Mr. Lea:

Where is that, please?

A. That's column "C", "Vacant Lots". You will notice that these number of lots decrease each year. That is

occasioned by the absorption of lots for new building or for combination with properties which may already be built upon, and we show the number of lots so absorbed each year in column "G". That figure is derived from the figures in column "F" which are the new buildings required to be built each year under this theory to support the plan. The factor that has been used in determining the lots absorbed in column "G" from the new buildings in column "F" is 2.2 lots per building, which is the experience of the past five years. In column "E", again the first two figures are the actual numbers of buildings in the City in the beginning and ending years of the experience represented here. The other figures are advanced by the amount of new building acquired each year. Now, as to buildings, we have used a parallel factor with that of population, that is, 3.5% per year, on the basis that the number of buildings in the City will in all probability be proportioned to the number of persons in the City at any time in that span. Now, these figures show the necessity of advancing in the new thirty-six years from our present population of 8,138 to a final population in 1976-77 of 28,065. And, from a present 3,366 buildings to 16,217 buildings. The vacant lots tend downward from a present of 16,132 to a final of 3,281. I would like to call your attention to the fact that we will still have in 1976-77 in addition to this acreage, sufficient lots—almost sufficient lots to build the number of buildings now existing in the City. We will not at that time be completely developed. Now, from these statistical figures we turn to our assessed valuations. We have first, in column "H", "Vacant Land". There again the first four figures are actual from the tax rolls. The fifth figure is the preliminary tax roll for 1940-41, the tax year 1940, and almost identical with the final figure. This study was made and largely completed before the final tax roll was available, but there has been practically

no change. Now, for vacant lots, the value declines; that is natural since the number of lots decline. However, we realize there should be some enhancement in lots, in the value of lots. While the number declines, we have so scheduled the decline that at the end of the schedule the then remaining vacant land in the City will have a value double that which it has at the present time.

Q. You don't mean that the total assessment would be double?

A. Per lot, or per unit. I don't mean that the total assessment will be more, but the value per unit will be more. As to "Buildings and Underlying Land" in column "I"—I will not continue to state that the first five figures represent actual figures, and so on; that is true all the way through.

Mr. Clarke:

That's true all the way across the table?

A. That's true all the way across the table. The factor, 3.5%, has been used directly on the assumption that value will increase proportionately to population. However, we find that with a present 1940-41 figure of $5100 average per building, the end of this schedule shows $8,225 average per building. So, the 3.5% factor in reality does not keep pace with population, but also produces an enhancement of the value of the buildings.

Q. How much is that present average?

A. $5100. May I say, too, that in some of the averages and figures I will use the closest round figures, rather than put a lot of suppositional dollars and cents into the record; I mean, on my comments as to averages, and so on. Personal property is also advanced on the straight 3.5% theory. Here we find a rather direct relation in that the value per building at present would ap-

proximate the value per building at the end of this forecast. Now, the total valuation is simply the sum of this that I have just described. In column "H" we treat our problem of the uncollectable vacant lots in the City.

Q. You mean "M", don't you?

A. Yes, column "M", that is. We have at the present time over 10,000 vacant lots which are delinquent to the City, in most cases for 1937 and '38 and '39, and in some cases even beyond that year. Nearly all of those lots are also long delinquent in that tax sale certificates exist upon them in the hands of others, as far back as the year 1932 in most cases, and in some cases to 1925. Some of these properties go back to the beginning of the City, but, of course, those represent merely a handful.

Q. Now, of those delinquent taxes against these properties that you speak of, the taxes for the years 1928, 1929 and 1930 were held invalid by the Courts that you testified about yesterday?

A. That is correct.

The Master:

You said, Mr. Shaw, that you had more than 10,000 lots delinquent?

A. Yes, sir. Now, in that, I am speaking of the total number of parcels. I have not reduced that figure to the fifty foot standard. I might say, to clear the statement, that the actual number of lots in the City is 24,894.

Q. What do they range in front footage?

A. From twenty-five to seventy-five. The great majority of them are fifties, but several subdivisions are in twenty-fives. One subdivision is part in forties and lots here and there are in seventy-fives and other irregular widths.

Q. Now, as to this "M" column, "Less Uncollectible Vacant and Personal"; what period of time does that uncollectible refer to?

A. Within the fiscal year.

Q. That doesn't take account of redemption of lands from those tax sales certificates issued at the end of the fiscal year, nor sale of those certificates to third parties after the end of the fiscal year, does it?

A. No, sir, we have no means of predicting when the delinquent tax may be sold or redeemed. It is necessary to study the possible uncollectible in order to show what will actually be done under the plan in cash in any year. We have declined the uncollectible from its present rate of approximately 50% by value of the vacant property, and approximately 25% by value of the personal property, to a figure at the end of this schedule of 7% for personal property and 14% for vacant land. This figure at the end represents less than 1% of the then total assessed value of the City, which is approximately the experience of Miami Beach today, and Miami Beach today is approximately the population of the City of Coral Gables as predicted here in 1976-77. Now, those uncollectible figures have been reduced by an even progression throughout this, and we have adopted for that purpose a reduction of one-half of 1% per annum on the personal and of 1% per annum on the land. I will discuss later the possibility of redemption of these delinquent taxes during the term, and its effect upon the debt service schedule. Column "N" is simply the total assessed value in column "L", less the amount which has been or which is expected to be uncollectible as to assessed value. We have another problem in the City which affects this plan in that the second series securities are supportable only by levy upon the non-homestead exempt value in the City, so that in a complete study of the plan we must attempt to predict what will be the deduction for homestead exemption. Our experience has been in percentage of the improved property, that is, the buildings and underlying land, 22% for 1936-

37, 27.6% for 1937-38, 29.5% for 1938-39, 33.8% for 1939-40, and 36% for 1940-41. This is an average increase per year over that period of 2.8%. We have analyzed both the 1936 tax roll and the 1939 tax roll to determine what the possible homestead exemption might have been. I mean by that, the deduction on account of homestead exemption if every property in the City were a homestead, and that is possible because the Act provides for an exemption of business buildings or apartments if they are actually the homestead of the applicant. It is, of course, unreasonable that every property in the City will at any time be a homestead. Our study of the 1936 and 1939 tax rolls showed a potential maximum of 56% of the total value of buildings and underlying land. Now, as I say, we will probably never reach that 56%, although it is a possibility. We do know that through the creation of new homesteads by the comparatively accessible mortgage arrangements of today, homesteads are, and probably will for some years, be advancing in number. We have taken as our maximum a point midway between the present figure of 36% and the known potential figure of 56%, and considered that as the stopping point, and then we have slowed down the annual increase for our prediction for the future from 2.8%, our experience, to a factor of 2%, which we have used as an increase in each of the years from 1942-43 through 1945-46. For the remaining years of the progression, we used the arbitrarily adopted maximum of 46% of the value of buildings and underlying land. The last column of this estimate shows the net assessed value upon which the taxes will be collectible for operations or for the second series refunding issues, and is simply the figures of column "N", less the figures of column "O". This last column has as a reduction from the total assessed value, not only the uncollectible vacant and personal property taxes, but also the homestead exemptions. Oh, yes; I want to

call your attention to the fact that in the figures for the value of buildings and underlying land, column "I", no recognition has been given to depreciation or obsolescence, despite the fact this condition has existed to a rather serious extent in Coral Gables, even in its short fifteen years of existence. This is not taken into account because we know of no means by which to accurately predict its occurrence. The rolls might be reduced both by actual physical depreciation and by a depreciation of value brought about by a change in architecture or in construction, as has been the case in our experience.

Q. Has this column taken account of the value which might be added to depreciated properties by repairs and maintenance?

A. It, in a sense, assumes that all property will be kept to its full value throughout the term, and that all depreciation and obsolescence will be overcome either by repairs or alterations immediately that it is recognized. That is a rather extreme schedule, but we have not yet reached the point of wisdom where we know how to handle it. Any depreciation or obsolescence upon these buildings would affect the assessed valuations represented here adversely, and perhaps to a serious extent, and would consequently affect the amounts of payments upon the City's—I will put it, the amounts to be produced by these valuations as altered by that depreciation for the purpose of servicing the City's debts or its operation.

Mr. Adams:

We want to offer this in evidence now, Your Honor.

The Master:

I was just going to ask you; you said you wanted to offer it for identification. You are offering it in evidence now?

Mr. Adams:
Yes.

The Master:
I won't mark it for identification then. Is there any objection?

Mr. Warren:
Yes, sir. We object to that, if the Court please; it is not the original records themselves, and it is a compilation by someone not an expert in compiling things. The figures which he uses are a potential maximum which is highly arbitrary. They take an arbitrary figure to calculate the value of the homesteads at the end of the period; the compilation is not backed up, and is the result of conferences with various experts. The information doubtless has been compiled by the witness, but the witness is not competent to testify to it.

Mr. Clarke:
May I ask him a qualifying question or two to see if the objections I have in mind have any weight?

Mr. Adams:
Yes, sir.

Preliminary Examination.

By Mr. Clarke:
Q. Mr. Shaw, on taking personal property for the first five items, on what basis have those been increased? Experience or on some arbitrary basis? Personal property, column "K".

A. The first five lines of personal property are on experience, except that the figure of $941,689.00 for 1940-41 is the preliminary assessment roll figure and has been modified by a very few dollars in the final roll.

Q. Well, now, the items from then on down, on what percent of increase have they been based?

A. 3.5 per cent per annum.

Q. Now, is that the same per cent. that has been shown by experience on increase in personal property for the past ten years, or does that go back to the population?

A. No, sir, and I can explain that. Until the year 1935, the City did not assess any personal property, and that was one of the reasons for the invalidation of the 1928, '29 and '30 taxes. In 1935 we were forced to make our first personal property assessment roll. Needless to say, that first roll was, let us, say, amateurish. The rolls have been perfected since that time. Our experience on personal property is not sufficient to permit us to adopt a standard other than that of comparison with the population advance.

Q. Now, the first five items—all these questions I am asking you assumes that the five items—rather, the fifth item is based upon an incomplete roll, but estimated. The first five items under new buildings and underlying land, is that based on experience?

A. Exactly.

Q. And the items after that, what are they based on?

A. 3.5% per annum increase.

Q. Now, is that in accord with your experience on population increase, or your previous increase in assessed values?

A. Practically both. It is in accordance with the experience and expectation on population, and by analysis of the improved property value in the City for the period from 1931 to 1940, inclusive, we find an increase in value on account of new improvements of 38%. Now, a 3.5% progression for ten years produces 41%, so we can safely say that our experience as to buildings has also justified the estimate.

Q. Now, your vacant land has been decreased by 3.5%, too, or is that a subtraction?

A. No, sir. The vacant land—there are two factors to be considered in trying to estimate the value of the vacant land from year to year. First, the removal of lots from that column to the improved property column, and second, the possible enhancement of value of lots in the City.

Q. I see.

A. With the equivalent of 16,000 vacant lots in the City at the present time, we do not see how there can be much enhancement on the average for some years to come, until the surplus of lots has been reduced, but we have figured that enhancement all the way from the first year of the estimated figures to the end. Now, obviously, an arbitrary method had to be established for that progression. There is no way that we can definitely say that the value of lots at any one time will be so much; but we have reason at that end, that the vacant properties will be worth twice as much as they are today. We have then to determine the value that that would produce for the then remaining vacant property as shown in the statistical tables. Then we have altered the assessed valuation from the present known figures year by year by a constant figure, so as to produce that result at the end. Now, that constant figure turned out to be 2.25% per annum of the value of the vacant lots, and that is rather close to our experience for five years. Now, we have had in this past five years a situation which may not exist in the future, but since we are attempting to be on the optimistic side of this picture, and not attempting to show an unreasonably small ability, we have overlooked that fact and have carried the absorption of lots and the reduction of vacant lots along in accordance with experience. Now, the unusual situation has been that in the beginning a great many buildings, resi-

dences, were built on 50 foot lots. People are tired of that. People want 75 or 100; so the experience for the last seven or eight years has been that not only for actual new buildings, but also the addition of lots to previously existing lawns. Now, the present houses are being built largely upon 75 and 100 foot lots. No doubt that absorption will slow down, but we again can't predict that. We don't know at what point to put our finger upon.

Mr. Clark:

I would like to further object to the introduction of this document in evidence on the ground there has been no basis shown that there is any scientific relation such as has been assumed in this document between probable increase in population and an increase in buildings, decrease in vacant lands and increase in personal property, and in fact, the exhibit disproves that there is no direct relation in nor the same proportion of those items; and further, that the chart is not based on any known, or shown to be known by this testimony, scientific basis of valuation or prediction of future valuations of city property.

The Master:

Are there any other objections? Do you renew your objections, Mr. Warren?

Mr. Warren:

Yes, sir; I renew the same objections.

Direct Examination (Resumed.)

By Mr. Adams:

Q. Mr. Shaw, can you further explain or state, or add anything to your testimony about the scientific basis of the estimates included in this Exhibit 22?

A. Mr. Adams, I can say that there is no scientific basis of the nature that I think the gentleman means. Cities are like individuals. The mere fact that you have become Master in this case doesn't mean that I will eventually become Master in a municipal bankruptcy case. The mere fact that one individual becomes rich is no indication that another will. Cities must be measured largely upon their own statistics, and the figures which might be reasonably expected to apply to Miami Shores, or to Fort Lauderdale, or to Jacksonville, could not be taken for Coral Gables. Any study must be as of that specific city. It is all right to compare with other cities, but not to base your plan or your estimates for the future upon other cities. So far as I know, no factors exist which could be adopted by us, but our own factors must be determined specifically.

Q. Mr. Shaw, where the basis of the estimate has been varied from your actual experience, has that variation been on the side of optimism for future growth and increase of assessed valuation in the City, or on the side of pessimism?

A. It has been on the side of optimism, Mr. Adams. May I say that I have discussed this schedule with a number of the experts that Mr. Warren speaks of, and all of them discount considerably the 3.5% growth rate. Some of them expect an even larger homestead exemption. Some of them question the doubling of the value of the realty in that time as a prediction. It might double or triple or quadruple, but we can't make that prediction.

Q. Mr. Shaw, I failed to ask you if you had any sheepskin diplomas.

A. Mr. Adams, I left Georgia Tech to go in the Army, and was not sensible enough to return.

Q. Your education has been that obtained, then, in the actual field of work and study and association with

those who hold diplomas and evidences of scholastic accomplishment?

A. That is correct, sir. Now another point that I would like to raise about this schedule is that it is impossible that the schedule could be followed on any even curbe. We have had depressions in the past, and booms in the past, and we will have them in the future. Again, we can't predict those. Now, in the last fourteen years our experience on building permits has been that the rate of growth has exceeded the theoretical 3.5% rate in only six years, and that it has been less steep than that rate in eight years. In some of those years, building was practically at a stand-still. There will be flat points in this schedule. We expect that in actual experience there will be boom periods in this schedule which will bring the progression back to the proper position in some unpredictable year, and in all probability over the term of the estimate the conditions will be met. Now, I have here, if it will be useful, a graph which has been prepared.

The Master:

Well, let's confine ourselves to this schedule for a moment.

A. Your Honor, this graph that I speak of is representative of the schedule and shows it in another way.

Q. Have you prepared, Mr. Shaw, from the original records and statistics of the City, a graph showing the relation of this 3.5% theoretical increase in population, and its accompanying effect upon buildings in the City, to the actual building permits of the City?

A. I have, Mr. Adams, and I have it before me.

Mr. Adams:

We would like to offer that as a graph study of a portion of the data. We offer this in evidence as Exhibit 23.

Mr. Lea:

I would like to suggest that this graph be given a proper designation, because this is merely one man's estimate, isn't it?

Mr. Adams:

No. Mr. Shaw will identify that.

Q. Mr. Shaw, describe, please, this graph, and explain the information and its source that is shown on here.

A. The graph was made, Mr. Adams, for the purpose of checking and verifying the 3.5% growth rate, and shows in the graph in the center of the sheet a solid line curve, which represents at each year point the total number of buildings in the city. This has been secured by taking our known present figures and working back by the number of building permits each year. The dotted line curve is the curve which would have been maintained had the 3.5% schedule been followed throughout those fourteen years. You will note that the actual curve starts at the dotted line curve, rises above it, meets it again for five—I mean, after five years, falls below, and does not again meet the theoretical curve until 1940, or thirteen years after the beginning. This, we think, fairly well demonstrates the following of the 3.5% theory in substance in the schedule. The graph on the right hand side of the sheet expresses the same thought in the number of new buildings each year as shown by the building permits of the City, which shows practically no building for the years 1928 and 1929 and 1930, and through 1934, and then building in excess of the schedule for the remaining years shown. Now, over these 14 years the excess has been but 15%, and the curve includes at the beginning one year of the wind-up of the boom situation, and at the end a boom situation created by easy mortgage money.

Q. How many of these years was the actual experience in new building less than the 3.5% increase shown in your Exhibit 22, and how many years in excess?

A. Eight years less, and six years in excess.

Q. And the average over the 13 years equalled the 3.5% growth?

A. With a slight error.

Q. Now, do you have any other similar detailed studies of factual experience situations to justify the estimates and figures in your Exhibit 22?

A. I do, Mr. Adams. On the theory that long columns of large figures are hard to interpret. I have graphed several of the factors in this schedule and have one here showing curves for the scheduled increase in population of the City, including the experience of increase since 1936, together with the curve showing the number of vacant lots remaining in the City, and a curve showing the buildings which will be in the City at the various points in the progression. This graph principally serves to show the rather reasonable comparisons between population and the statistical number of lots and buildings throughout the course of the estimate.

Mr. Adams:

We offer this as Exhibit No. 24.

A. (Continuing.) Another graph, drawn directly from the figures on this schedule, shows the progression of the total value of the value of buildings and underlying land, of the amount deducted for homestead exemptions, the value of vacant lots and the value of personal property. All these are represented in Dollars. The "dashed" line curve at the bottom shows the population curve. This will be useful in seeing the rather rapid advance of that necessary to follow this schedule.

Mr. Adams:

I offer this in evidence as Exhibit No. 25.

Mr. Warren:

May I ask this question. Are all of these based upon the Exhibit 22 which has been offered?

Mr. Adams:

Yes.

(The Witness):

A. The first is based also upon other data, as to building permits back through 1927, and while it is not based upon Exhibit 22, it is in proof of one of the assumptions of Exhibit 22.

Mr. Adams:

And is also supported by the Exhibit 15, which is the Annual Statement of Building Permits, that goes back to the year 1927, I believe.

(The Witness):

A. Only in part, Mr. Adams. The annual statement of building permits shows all permits of all nature. In this study I have separated from that the permits that were issued for new buildings, since that would be the only thing applicable to Exhibit 22.

Q. Do you have any other studies?

A. I have here a graph which might be interesting in connection with this schedule which shows, derived from the figures of Exhibit 22, the population per square mile of the City on two different assumptions. The dotted line is the population per square mile of the 8 square miles, approximately, north of Sunset Road, which is the subdivided portion of the City. The straight line curve, the solid line curve, is based upon the entire land area of the City of 14.5 square miles.

Mr. Lea:

Well, this assumes that nobody will move; isn't that right? And that everybody will live at the same place?

A. No; this is the population per square mile, based upon the population figures produced by Column "B" of Exhibit 22, and is offered simply to show the present widely scattered and undeveloped nature of the City, with only 561 persons per square mile in 1940 in relation to its whole area, and 1,017 persons per square mile in that year in relation to its northern subdivided area.

Mr. Clarke:

Is that a good or a bad thing, for the City, Mr. Shal?

A. That is a bad thing for the City. It is an extremely bad thing for the City. I think I can bring that out for you later on, sir.

Mr. Adams:

We offer that in evidence as Exhibit No. 26.

(The Witness):

A. I have also shown on that graph the population per square mile for Miami Beach and for Miami, based on the 1940 census, and the areas of those cities as reported to me by their officials. I believe that those graphs would be useful to any who wished to study this schedule, since the figures are quite large, and there are many of them. Mr. Adams, I think I have finished with this schedule.

Mr. Lea:

You haven't extended this about Miami Beach and Miami like you have your own, have you?

A. No, sir, because I don't attempt to fix a rate of growth for them.

Mr. Warren:

We object to those Exhibits 23, 24, 25 and 26, on the same grounds that we objected to No. 22.

Mr. Lea:

We have the same objections to all of them, as I understand, and it is a standing objection.

The Master:

Yes. Suppose you just renew your objection to Exhibit 22, and add anything you wish.

Mr. Warren:

We just renew our objection to Exhibit 22, and to the rest of these exhibits, that is, No. 22 to No. 26, inclusive.

The Master:

I think these exhibits are certainly not conclusive, but they are relevant for consideration for what they are worth. As to whether Mr. Shaw is an expert, I believe some of his testimony is worth more in showing his expertness than if he had been questioned as to his past diplomas and performances. It seems to me he has shown he is a practical expert. The objections are overruled.

(Instruments above referred to were marked in evidence as Petitioner's Exhibits 22, 23, 24, 25 and 26, respectively).

(At this time, Mr. W. Terry Gibson, attorney of record for Fiduciary Council, Inc., and Augustus T. Ashton, arrived at the hearing, having been absent on the previous day, and up to the hour of 3:40 P. M. on this date, because of illness).

(At this juncture of the proceedings a short recess was had).

Mr. Gibson:

Your Honor, I think we would like to ask that the rule for all parties who are going to testify as witnesses be invoked.

Mr. Adams:

On behalf of who?

Mr. Gibson:

On behalf of Fiduciary Council, Inc., and Augustus T. Ashton, and anybody else that wants to join with me in the request.

The Master:

Who is here who will be called as witnesses?

Mr. Adams:

The experts. Dr. Reed and Mr. Fuller. Dr. Reed's testimony, as indicated by the identification of his report of 1934, will be purely expert. Mr. Fuller's is on correlary matters and not particularly the detailed facts of Coral Gables.

The Master:

I can't see the necessity of putting the witnesses under the rule.

Mr. Adams:

We have only expert witnesses. That is, who are present. We have three other witnesses to facts that Mr. Shaw has not touched on at all, but they are not present and won't be. Mr. Curry and M. B. Garris, and Mr. Chauncey Butler, will be called for very brief questioning.

The Master:

Well. the Motion will be denied.

(Examination of Mr. Shaw resumed).

By Mr. Adams:

Q. Now, Mr. Shaw, have you made an estimate of operation of this refunding, or plan of composition, using the actual experience figures of the City through the fiscal year 1939, the budget and assessment roll—preliminary assessment roll for '40-41, and estimated levies and assessment rolls on the basis of the 3.5% growth rate schedule for the year '41-42, and subsequent years?

A. I have, Mr. Adams, and have it here.

Q. Will you please explain this chart which we tender as Exhibit No. 27?

A. The previous schedule, Exhibit 22, had to do only with numerical statistics and assessed values. This chart or schedule is based exactly upon Exhibit 22 and goes into the taxes which will be produced by those assessed values. The assessed value total shown in Column "H" is in each case drawn directly from Exhibit 22, and the assessed value for the non-exempt securities, the second series securities in Column "L" is also drawn directly from that schedule.

Q. Is that non-homestead exempt?

A. That is correct.

Q. It relates to non-homestead exempt land?

A. That's correct. Several columns of this schedule are taken directly from our refunding plan, and might well be described at this time. Column "C" is simply a statement of the required interest rates of the refunding bonds. That is actual, and is taken from Ordinances Nos. 269 and 289, Exhibits 6 and 9. Column "I" sets forth the millage required to be levied for the first series securities which are 99% of those issued under the refunding, approximately.

Q. Is that the millage that has been referred to as minimum millage in the testimony?

A. That is correct.

Mr. Lea:
Just a moment. You haven't offered it in evidence yet, have you?

Mr. Adams:
No. I will now.—Yes, I have.

Mr. Lea:
I want to object to it on the grounds that it doesn't follow the ordinances.

(The Witness):
A. I am about to explain that. There has to be a variation.

Mr. Lea:
I would just like to reserve my objection, then.

The Master:
All right; suppose you reserve your objection until he finishes.

A. (Continuing.) Column "M" shows the minimum millage required to be levied for the less than 1% of second series securities, which are not supportable by taxation against homestead exempt value. The sum of these two columns makes up the 6, 7, 7½ mills minimum levies, and 8 mills minimum levies specified in Ordinance 269. Ordinance 289 set forth the portion of the millage which was to be applicable to the second series securities. Column "F", the bonds required—rather, Column "F" is the bonds retired by other means, and shows the amounts of bonds actually retired to the present, and the amounts of bonds scheduled to be retired in the future during the first ten years of the plan, as provided and required by the refunding Ordinance 269. These bonds are

not to be retired from current taxation. In this plan, as distinguished between the other three plans, the City retained its delinquent assets with the agreement that a portion of the sale of those assets would be used to retire $500,000.00 of the bonds upon a fixed schedule during the first ten years. This column is in accordance with that requirement.

The Master:

Which column?

A. Column "F". Column "E", entitled "Sinking Fund Requirement", sets forth year by year the amount stipulated by Ordinance 269 to be required to be retired from the sinking fund. These amounts come directly from the refunding ordinance. Now, for the logical sequence, we had better take Column "B", the bonds outstanding. That, for the first few years, is the actual, and commencing in 1941-42 is secured by deducting each year the bonds which have been scheduled to be retired that year from either Column "F", the bonds retired by other means, or from Column "E", the sinking fund, so that this shows the expected balance of principal outstanding at any time.

Q. Does that Column anticipate the paying according to the schedule of the refunding plan of all amounts?

A. It does, Mr. Adams. Column "C", interest rate. I have already mentioned that, and by using the rates in Column "C" as a multiplying factor on the balances in Column "B", we get the expected interest requirement year by year shown in Column "D" for both the first and second series refunding bonds. Column "G" shows the total tax requirement of the refunding, based on this 3.5% expectation; that is made up of the interest requirement in Column "D" and the sinking fund requirement in Column "E". As I have previously said, the retirements in Column "F" are from other sources and

do not affect taxation unless we fail to meet the schedule, and in that event we are required to levy an additional millage to enable us to purchase sufficient bonds to comply with the schedule.

Q. Is that additional millage that you say would be required to levy, over and above the minimum millage which you would be required to make, which you mentioned?

A. Yes, sir. Now, by applying the millages in Column "I" to the assessed values as shown in Column "H", which are, incidentally, the collectible assessed values from Schedule 22, we find the amounts actual for the first few years, and the expected for the remainder of the years, levies for the account of the first series refunding bonds and tax participation certificates. And similarly, by applying the second series millages in Column "M" to the values in Column "L", which also are derived from Exhibit 22 and are the collectible values from non-homestead exempt properties, we have the actual at the beginning and the expected future levies for the account of the second series refunding bonds and tax participation certificates. Column "O" shows the total levy from both sources. Now, our refunding is made up of the two classes of securities, the bonds which bear interest and must be retired in accordance with the schedule, and the tax participation certificates which are payable only from certain sources, or rather, a certain source; from the total levies, collectible levies, in Column "O", must first be paid the interest requirement in Column "D" and the sinking fund requirement in Column "E", which are added together as the total fixed requirement in Column "G". The amount remaining after this deduction is, under the plan, to be paid to the tax participation certificates, or if not collected within the fiscal year, reserved as unadjustable tax sale certificates and paid to them when, as and if collected. By deducting the figures in Column

"G" from those in Column "O", we find the amount of taxes applicable each year to those tax participation certificates. That is, the amount of levy in excess of the fixed requirement. In Column "Q" we have shown the amount of taxes expected to be uncollectible in each of the fiscal years represented, which is produced by applying to the assessed values shown as uncollectible in the fiscal year in Exhibit 22, the total required minimum millages of Ordinance No. 269, Exhibit No. 6. Column "R" sets forth the amount paid in the past or to be paid in the future—expected to be paid in the future within each and in all these fiscal years to the tax participation certificates as that year's dividend from current taxation. Now, that does not represent, necessarily, all of the dividend that the tax participation certificates will receive that year. As these delinquent taxes, represented in Column "Q", accumulate, of course, they will be sold or redeemed from time to time, and as they are, the proceeds will serve to increase the dividend to the tax participation certificates in the particular year in which the redemption or sale occurs. Since we cannot predict the year, then we will treat that simply at the end of the schedule and attempt to estimate what that will be.

Mr. Clarke:

What about "Q"? You start with that, and although your taxes every year are more, your uncollected amounts are less.

A. The Column "Q" is purely the vacant and personal delinquencies and has nothing to do with the improved property, and the fact that the progress of the reduction is slow is because of the slowness of that 2.25% reduction—just a minute—as I said before, the delinquency, the expected delinquency of vacant land and personal property is expected to decrease only at the

rate of one-half of 1% per annum for personal and 1% for the land, so naturally you have a slow decline there. Have I explained all of the columns? If so, I will go on with something else.

Mr. Berry:

Does the Exhibit 27 take into account either actually or theoretically the bonds proposed to be issued to refund the presently outstanding unrefunded bonds and the interest thereon?

A. No, sir, except in that it assumes for the year 1941-42 completion of the plan. For the previous years it does not take into account the unrefunded debts which exist in the form of judgments and mandatory levies, since during those years other levies were made for the account of those particular debts, and they were not treated as a part of the refunding schedule at that time.

Mr. Lea:

Where did you get the statements made under "I" in this schedule?

A. Under "I"?

Mr. Lea:

Yes.

A. The Ordinance 289 provides at the beginning the .12 mills for the second series securities.

Mr. Lea:

I'm talking about "I".

A. I am referring to this to explain that.

Mr. Lea:

All right.

A. That has been deducted from the required 6 mills, and there has also been deducted from the 6 mills .1 mill

representing that portion of the required millage which the amount of the refundable bonds and interest existing in the judgments and mandatory levies bears to the total amount of indebtedness to be refunded.

Mr. Lea:

Your Honor, I want to object at this time to the introduction of this instrument on the grounds it is based on a premise that is not in the plan of composition, in that under Section 8 of Ordinance No. 269 a covenant is made that a direct annual tax of not less than six mills for the fiscal years 37-38 to 41-42, inclusive is to be made; seven mills from 42-43 to 46-47, inclusive; and seven and one-half mills from 48 to 57, inclusive, and eight mills for each of the years thereafter. That under Section 5 of Ordinance No. 289 the minimum rates were again prescribed for this first series, and that the whole set-up of this paper is based on millages that are not in accordance with the plan of composition. The six mills is the millage they would have to base it upon, and not the 5.78, and taking off the point, and then the ten, because that is not the plan of composition. The whole estimate and set-up is based on a premise that is not in accordance with the plan of composition, Your Honor.

The Master:

Do you want to ask any questions on that, Mr. Adams?

Mr. Adams.

While he is looking that up I want to make this statement regarding that objection. In the first five years—fiscal years, involved in this chart, the first line shows no millage for the year because this plan of refunding began on January 1, 1937, and was serviced out of taxes then already levied. The next year, 37-38, was the first complete year of the plan in which to levy and in which

a levy was made under the refunding plan, and the application of Ordinance 269. At the time of the tax levy that year, there were in existence certain peremptory writs of mandamus requiring the City to service a certain amount of the obligations which were included in the plan in Ordinance 269. In making the minimum levy under the ordinance, we eliminated from the millage the percentage of the millage represented by the percentage of the bonds that were in those judgments, because they were for the time being withdrawn from the operation of the plan.

Mr. Clarke:

They were forever withdrawn from the plan.

Mr. Adams:

Beginning in the fiscal year 1941-42, this Exhibit 27 assumes, as is shown on the chart, the completion of the refunding and a total minimum millage shows part in Column "I" and part in Column "M", of six mills; 5.88 mills of it being applied to the first series bonds, and .12 of the millage being applied to the second series bonds, and from then on out, those two columns show the minimum millage required in the refunding ordinances.

Mr. Lea:

Well, just a minute. That still doesn't comply with Section 8, which contemplates that bonds can be refunded and purchased on the market, and regardless of how many they buy up or how many are paid by peremptory writ, Section 8 says they must levy six mills for all bonds outstanding, and this is not in accordance with the plan of composition. And moreover, under this section they haven't even complied with the second series. The minimum rate required of them under Section 5 of that second series is from 1937-38 to and including the

years 1941-42, 5.88 mills for the second series, and from there on, 6.86 mills, 7.35 mills and 7.84 mills.

Mr. Adams:

What are you reading from?

Mr. Lea:

I am reading from Section 5 of Ordinance 289. I will read the section to you, Your Honor. (Thereupon, reading Section 5 of Ordinance No. 289 to the Court). So that as a matter of fact, the exhibit shows that it hasn't even complied with either one of the ordinances, and it is based upon a premise not in accordance with the plan of composition and is entirely confusing.

Mr. Warren:

May I ask counsel or Mr. Shaw what is the purpose of this exhibit?

(The Witness):

A. I will answer that, Mr. Warren. The purpose of this exhibit is to show the difference between the operations under the refunding plan and the later schedules which will show the operations if the refunding plan is not completed. By operations I mean, of course, the debt service operation, primarily, and thus to show the necessity for completion of the refunding.

Mr. Warren:

How can it show the ability or inability of the City to pay. It is based upon an arbitrary figure.—Well, I withdraw the question.

Mr. Lea:

The point is, Your Honor, it hasn't even been based upon the plan, as I see it.

Mr. Warren:

In other words, it is subject to being connected up in the future, is it?

A. Mr. Lea, are we at a misunderstanding on this point? Mr. Adams thinks so. This 5.88 mills, and so on, is levied against the total assessed value.

Mr. Lea:

That's right; including homestead exempt values.

A. Yes, sir.

Mr. Lea:

But you had 5.78 and the .12 in the first instance.

A. Yes, sir.

Mr. Lea:

My contention is that the Ordinance No. 269, as even again referred to by No. 289, says that you have to levy the six mills, and that is a set millage regardless of how many, or all funds of monies, after you have paid the bonds and interest, are available to the T. P. C. holders. So this estimate you have here is based on a premise that is not in the plan of composition. In other words, if you had six mills there, under "I", I would say that the thing would be correct.

A. It could not be.

Mr. Lea:

Now, I just want to read to the Court again, so I can be sure, what Section 8 says. (Re-reading Section 8, Ordinance 269.) Ordinance 289 again says, "the minimum tax rate prescribed by Section 8 shall be imposed upon all property which was not exempt by Section 7, Article 10 of the Constitution", so that is six mills, as I see it.

A. It adopts that section for what substance there may be in it, and then says, "shall be imposed upon all

property which was not exempt by Section 7, and there shall be imposed upon all homestead property exempt from taxation by Section 7 of the Constitution the following minimum rates of taxation in lieu of those described by Section 8 of Ordinance 269". Now, the effect of that is to reduce the levy upon the homestead exempt value by the amount of the millage applicable to the second series securities. This ordinance also sets up that there shall be the remainder of the six mill, 7, 7½ and 8 mill levy, made against the non-exempt property.

Mr. Lea:

Well, how about Section 7 there, which says that all provisions of Ordinance 269 shall continue to be in force and effect and applicable except to the extent that such provisions may be expressly modified hereby. There is no express modification, and I think I have read it through very carefully.

A. It seems to me that is an express modification. Mr. Adams, suppose you take this up. This seems to be on the legal side of the case.

The Master:

Gentlemen, let me rule on this Motion. It seems to me we are getting off the track in a discussion with the witness as to an interpretation of the ordinance. It is incumbent upon counsel for the Petitioner to present evidence that will prove their case. If they present evidence that proves them out of Court, this isn't the time nor the method of attacking it. I think that's a matter for argument when we get through with the testimony. The Motion is denied. The objections are overruled.

Mr. Warren:

May I make this motion, and objection, to the exhibit; because of itself it proves nothing, it has to be connected

up, and I will accept a reservation of the ruling on that motion contingent upon connecting it up. This, of itself, does not show the ability or inability of the City to pay.

Mr. Adams:

We have already stated that as we interpret the proceeding, Mr. Master, the fact or the question of inability to pay is not the only factual question involved. We offer this as partially in support of the inability to pay in its connection with the other evidence, and as supporting the facts which we propose, to substantiate that it is a fair plan.

The Master:

The motion is denied at this time, and Mr. Warren may renew it and move to strike at a later time if he sees fit.

Mr. Clarke:

May I ask one question of the witness so I can understand this one column?

Mr. Adams:

Yes.

Mr. Clarke:

The first four levies down through 1940-41 under Column "I", is the actual levies made on homestead property and also on exempt property for the refunding bond series "One"?

(The Witness):

A. That is made on all property, yes, sir, both exempt and non-exempt.

Mr. Clarke:

Regardless of whether it is homestead or non-homestead?

A. That's correct.

Mr. Clarke:

And you didn't make a six mill levy on homesteads?

A. No.

Mr. Clarke:

Or on non-homestead?

A. No, we did not make a six mill levy. We divided the millage in accordance with the change made by Ordinance No. 289 and levied that part of the millage applicable and representing debts supportable by taxation upon the homestead property, upon all the value in the City.

Mr. Clarke:

As to the first series bonds, you made no distinction in your levy as to homestead and non-homestead property?

A. No, sir.

Mr. Clarke:

And it is contemplated in the future you will make no distinction as between homesteads and non-homesteads?

A. Yes; and as to second series—

Mr. Clarke:

I understand; they are only as to homesteads.

A. Yes.

Mr. Clarke:

All right.

Direct Examination (Resumed).

By Mr. Adams:

Q. Have you made all the explanation of Exhibit 27 that you desire to make?

A. No, sir, I would like to comment upon the facts represented. This schedule shows in the totals the amounts which may be expected to be realized by the two main classes of refunding securities, that is, bonds and tax participation certificates, if we follow the schedule of Exhibit 22. It shows, for instance, the total retirement of the bonds issued and to be issued in Columns "E" and "F" in amounts of $3,689,150.13 and $500,198.98, respectively. This represents the principal retirements of the refunding issues. These principal amounts will draw interest, as reflected in Column "D" to the extent of $4,709,974.82. The total to be realized either through the levies or through the purchase and retirement of bonds by other means is the sum of the totals of Columns "F" and "G", which is $8,899,323.93. The tax participation certificates will receive the difference between that amount and the total levy in Column "O" of $12,389,790.52. Now, a part of the amount of $3,990,665.57 which will be set aside in reserve for and paid as received to the tax participation certificates. That is the estimated total of $529,417.44, in Column "Q". Now, those delinquencies in Column "Q" are simply the delinquencies within the fiscal year. It is inconceivable that they will remain delinquent throughout the term, and that at the end of the term they will represent the amount, actually represent the amount shown at the bottom of that Column "Q". As I have said before, we can't predict when those delinquencies may be paid, but we have attempted to solve the question by reasoning that if there is only $4,532.84 delinquent at the end of the term, that the others must have been returned to the tax rolls as currently taxable

properties at some time during the term. With that assumption, and the extreme assumption that the then delinquencies will exist for all of the years represented in this plan, we find that there will be only approximately $112,000.00 of face value of taxes then delinquent. Now, if that be the case, then that balance must have been redeemed at some time during that progression; and again, we have another factor that we can't even guess about. We don't know how long properties will be delinquent before they are redeemed, but we will assume that there will be a minimum of two years. On that assumption we have estimated what would be the interest return on the redemption of those tax sales certificates from time to time, with only two years' interest under the State law at 28%, and we find that that interest would approximate $116,700.00, a figure in excess of the $112,000.00 of face value which may be expected to remain delinquent. If that be the case, then at the end of the term the tax participation certificates will have received not only the total of the annual estimated payments of $3,461,248.13 in Column "R", but the additional amount representing the difference between the total of the delinquencies in Column "Q", $529,000.00, approximately, and the $112,000.00 expected to be then still delinquent, plus the interest on those which have been redeemed, and we find that they will have actually received at that time more than the total of the amounts in Column "P", the total amounts allocated to them, and they will still at that time have on hand for liquidation within the next six months for their account under the plan this $112,000.00, estimated amount of then delinquent taxes, plus the accrued interest upon it. So that in that respect this schedule slightly understates the payments which the T. P. C.s may receive—the tax participation certificates may receive. Another thing that I want to point out is that this is entirely in terms of tax amounts. When we sell taxes at tax sale, there is an immediate addition of

5%, which draws interest together with the tax amount in the certificate. Now, this schedule is not, or rather, has not included that 5%; this is expressed in tax amounts; that will be another factor which will increase, slightly, the payment to the T. P. C.s; actually, it would be about $26,000.00 over the term.

Q. Mr. Shaw, you testified to certain optimistic features in your estimates in Schedule 22. State what if any effect upon the Dollars shown in Exhibit 27 those optimistic features would have. What would be the effect? Would they tend to increase the monies collected and available for bonds and T. P. C.s, or decrease it?

A. If Exhibit 22 is optimistic, Mr. Adams, then the Dollar values in this schedule are high in proportion to the extent of which that other schedule, Exhibit 22, is optimistic. I do not know the degree of optimism in that schedule.

The Master:

Mr. Adams, I have about reached the point where I want to adjourn, I believe.

The Witness:

May I put one more sentence in? Then I will quit.

The Master:

Yes.

A. Any shrinkage in the expected growth rate or the expected increase in assessed values would be directly reflected in the tax levies of this Exhibit 27, and would consequently reduce the payment to the tax participation certificates.

Mr. Adams:

All right; we can very well break right here, Judge.

(Thereupon, at 4:40 P. M., the hearing was adjourned to the following morning, January 22, 1941, at 10:00 o'clock A. M., at which time the hearing was resumed. All counsel present at the hearing of January 21, 1941, appeared upon the resumption of the hearing excepting Mr. Lea, who arrived at a later hour in the morning, as indicated hereinafter in the record.)

Thereupon, upon the hearing being resumed, the following proceedings were had:

Mr. Gibson:

Your Honor, before we get started this morning on taking testimony, I wish to renew the request for the invocation of the rule against witnesses, in the name of those I represent, and in the name of all objecting creditors, this morning. Counsel for all parties feel very strongly and very seriously in the matter, after discussing all phases of it last night, and we are sure the Court has not done it just simply to be obstreperous; and we, in good faith, move the Court to exclude the witnesses at such time. We have a number of items of objections to their presence we would rather not argue, and we would like to have Your Honor rule on our request, on our assurance that it is made after due deliberation and consideration. If more discussion than that is needed, we will argue it, but we would rather not, and I don't know as counsel for the City have any particular reason—or, I don't think they would have any particular objection, and, of course, if they do allow these parties to stay present, we will have to object to their testimony when they make it. We think it is highly prejudicial to the objecting creditors for a number of reasons.

The Master:

Well, if counsel for all of the objecting parties are of that opinion, which didn't seem to be the case yesterday, the motion will be granted.

Mr. Berry:

That is correct, if Your Honor please. I didn't know who the witnesses were yesterday, and at that time it had never been called to my attention, until last evening, and I am thoroughly in accord with Mr. Gibson's objection.

Mr. Adams:

I would like the record to show at this point the witnesses being excluded under this order are only expert witnesses, and no witnesses of simple facts, you might call them.

Mr. Clarke:

May I inquire as to what witnesses as to simple facts are going to remain?

Mr. Adams:

There are none here. They are Mr. Garris, and Mr. Curry, and Mr. Butler, who are not present and will not be present until it is as convenient as can be to get them here, and their testimony will be very short.

Mr. Clarke:

But the rule is invoked as to them?

Mr. Adams:

Yes, it will be in effect.

The Master:

The rule is in effect to all witnesses, but Mr. Adams is calling attention to the witnesses who are now here. Let those witnesses wait outside somewhere in Mr. Redfearn's office, or somewhere.

Mr. Adams:

Shall we swear them now, since they have called for the rule? Then there will be no question later on as to whether they were here or not. Dr. Thomas H. Reed and Mr. Milton Fuller, please stand and be sworn as witnesses.

(Thereupon, the two witnesses above named were sworn by the Master and directed to remain away from the hearing until called to testify.)

Mr. Adams:

Now, at the close yesterday afternoon, Mr. Shaw had concluded his explanation of Petitioner's Exhibit No. 27, according to my memorandum.

The Master:

I understood it was not concluded.

Mr. Adams:

I mean, we were on it; not necessarily that we were through with it.

468 G. N. SHAW was recalled as a witness on behalf of the Petitioner, and being still under oath further testified as follows:

Direct Examination (Resumed).

By Mr. Adams:

Q. Now, Mr. Shaw, have you reduced to graph form from your Exhibits 22 and 27, I believe, the data showing the relation between the population growth, the operating taxes and debt service taxes of the City?

A. I have, Mr. Adams. I have here a graph showing—

Mr. Adams:
We offer this as Exhibit No. 28.

(Instrument marked in evidence as Petitioner's Exhibit No. 28.)

Q. Will you please explain this Exhibit 28.
A. The curves on this graph are labeled with the designation of the items they represent. "1" shows the population trend; "2" the debt service taxes, which is the total levy from Exhibit 27; "3" the debt service fixed requirement from Exhibit 27; and "4" is expressed in terms of the operating taxes able to be levied by the City out of 22 mills after providing for these debt service taxes.

Mr. Warren:
May I inquire who made this?
A. I made it, Mr. Warren.

Mr. Warren:
And is it based on any other exhibit that's in the record?
A. No, sir.

Mr. Warren:
The population and operating taxes—
A. (Interrupting) Just a minute; I didn't understand the question; I thought you said any other record; I had mentioned Exhibit 27 and—

Mr. Adams:
And 22.
A. Well, this comes directly from 27.

Mr. Warren:
Does 27 have an operating levy on that?
A. It does not, sir.

Mr. Gibson:

Where does the information come from, from which you compiled these graphs?

A. From the records of the City.

Mr. Gibson:

What record of the City shows the population of 1975?

A. It is estimates based upon its experience over the past ten years.

Mr. Gibson:

What estimates?

A. Exhibit 22 has the estimates in it.

Mr. Adams:

Mr. Master, this may save time; Mr. Gibson was not here at the time the witness explained the preparation of Exhibit 22 and Exhibit 27, and his questions clearly indicate that his anxiety is about matters that have been heretofore testified to by the witness.

Mr. Gibson:

I understand, but I have before me here a graph that certainly takes a lot of experience of an expert on the part of somebody to throw out a graph definitely showing a picture like this. Now, I want to know where it came from. Is it Mr. Shaw's opinion? He says that the records of the City show it. What records of the City, and who put those records there, and where did they come from?

The Master:

Mr. Gibson, that was all covered in the testimony yesterday morning, I think; I should think that would be my opinion.

Mr. Clarke:

May I explain to Mr. Gibson this is Mr. Shaw's anticipation of what these things will be.

Mr. Gibson:

Well, let's get it that way, "This simply represents my anticipation of what this will be".

(The Witness):

A. Based on experience in the past.

Mr. Gibson:

Based upon your experience in the past?

A. Based upon the City's experience in the past.

The Master:

I think if you will read the record of yesterday we will satisfy you, and if not you can cross-examine him.

Mr. Clarke:

I would like to inquire where the information, No. 4 on the graph came from, and if it didn't come from anything in the record, have him explain where it did before this instrument is admitted.

A. Mr. Clarke, that information is derived directly from Exhibits 22 and 27. I did not prepare—

Mr. Clarke:

Will you show me on Exhibit 22 or Exhibit 27 where "Operating Taxes" are shown?

A. They do not appear on that exhibit, but let me refer to the exhibit so that I will be utterly correct. (Examining exhibits.) On Exhibit 22, Column "P" represents the net collectible value for operations, and for the second series refunding issues. I have prepared a similar calculation, but at present have it only in work sheet

form, which is based upon these values, and the difference between 22 mills, that now being levied by the City, and the millages required under the refunding ordinance, and used that difference as the millage to determine the amount of operating taxes which can be levied by the City without increasing that total millage of 22.

Mr. Gibson:

Just a minute. I want to ask one more question. Does any of the information upon which this graph is based come from various studies, surveys, and reports made for the City by various experts employed from time to time?

A. No. The data on this was developed by me personally, based upon my experience with the City and my studies of the probable future of the City. Of course, I have been influenced by the knowledge gained from my discussion of those matters with experts.

Mr. Gibson:

Now, what experts have you discussed it with?

The Master:

Mr. Gibson, let's wait for cross examination on this. I don't think this is the time to go into that.

Mr. Gibson:

Yes, sir.

Mr. Warren:

Mr. Shaw, as to items "2" and "3"; "2" is debt service taxes, and "3" is debt service tax requirements.

A. That's correct, sir.

Mr. Warren:

What are the differences between those?

A. "2" represents the total debt service taxes as shown under the heading "Total Levy" in Column "O" of Ex-

hibit 27. "3" is the total tax requirement for the refunding bonds and is shown in Column "G" of that Exhibit 27. The difference between those two lines on the graph represents that portion of the total levy show on Exhibit 27 as "Amount Remaining for Tax Participation Certificates".

Mr. Berry:

On yesterday it was brought out by Mr. Lea that your Exhibit 27 did not show the fixed requirements for debt service as contained in the ordinance governing that, but there has been a variance and a voluntary withdrawal of certain of the indebtedness from the fixed requirements of that ordinance. Now, is this column "3" based upon the actualities of the case as you have determined it, or upon the ordinances and the plan as exhibited to us?

A. It is based exactly on the exhibit, and represents the actual figures through the years 1939-40, the estimated figures of the preliminary assessment roll and the budget for the year 1940-41.

Mr. Berry:

Now, not until yesterday did we know that the City was varying the plan as reflected by the ordinances. Have you any graph that shows what would be the collections if the ordinance was followed?

A. I have not, sir, but one could easily be prepared.

Mr. Adams:

If the Master please, yesterday, I was frankly so involved in these figures that I couldn't answer the question as a matter of argument from what is here, and I think it is something that should be explained now. I was deferring the explanation because of Mr. Lea's absence this morning. As I understand the objection to

Exhibit 27, it was two grounds. First, that it didn't follow the ordinance because it showed in Column "I" a levy for the year 1940-41 of 5.88 mills against the total assessed valuation of all property subject to taxation in the City, and then a levy of .12 mills against the non-exempt property. The ordinance requires a levy at that time of 6 mills on all property for the benefit of the bonds in series "1" which were adjudicated to have the benefit of taxing homestead exempt property. The 5.88 mills is levied against all assessed valuation. There is also levied against the non-exempt property .12 mills, so that non-exempt property has levied against it a total of 6 mills, wherein homestead exempt property has levied against it only 5.88 mills, which is the amount that Ordinance 289 said should be levied against that type of property. The .12 mills in Column "M" is applied to the assessed valuation in Column "L" against the non-exempt property. Now, the other question was that in years prior to that, the experience years of 1937-38, and 1938-39, and 1939-40, the total of the millage against the entire roll, 5.78 in the first of those years, and the .12 millage against the non-exempt property did not equal the requirement in the ordinance of 6 mills. There has been no adjudication of that point. There has been a thorough discussion of the point with the leaders of the larger groups of bond-holders who have exchanged, and an agreement reached with the City that its proposed plan was correct. That plan is this. The guarantee of the 6 mill minimum levy was to service the entire outstanding indebtedness of the City, and at that time there were existing certain judgments with peremptory writs requiring special levies to service a certain percentage of the then outstanding indebtedness. The City was of the opinion that they had no authority in law to levy two different taxes for the payment of one obligation. Therefore, the levies made pursuant to the peremptory writs withdrew from the refund-

ing plan the bonds represented in those writs amounting at that time to a percentage that would work out .1 millage. Now, then, as to all other then outstanding bonds, both refunded and unrefunded, we levied the millage required in the ordinance, discounted by the amount of bonds which were being serviced by other levies. As to those bonds represented here by counsel which have not been placed in judgment and have not been refunded, the City now has on hand in its 1-1-37 bond accounts money to cover the interest according to the rates of the refunding bonds which are being held for future exchange, also money in the tax participation fund to pay the dividends due to the tax participation certificates held for exchange for those bonds. For example, in Exhibit 19, showing the state of the progress of the refunding as of June 30, 1940, we show in the last two lines of that exhibit that since June 30, 1940, an additional $5,000 principal amount in bonds and $1,830 in interest as of January 1, 1937, had been refunded. When that refunding was made subsequent to June 30, 1940, the holder of those bonds with that amount accrued interest as of January 1, 1937, received the same payments in interest and the same payments on account of tax participation certificate dividends as did those who exchanged their bonds in 1937, so that we contend, as a matter of law, and proper interpretation of the ordinance, that Exhibit 27 does show a correct and lawful performance under the requirements of that ordinance.

Mr. Clarke:

Mr. Adams, will you explain to me, please, sir, where on Exhibit 27 the full 6 mill levy, or the 6 mill levy less the .1 mills which you deducted for peremptory writs and agreements, where that is shown as to non-exempt property, property that is not homestead.

Mr. Adams:

Property that is not homestead has on this exhibit two items of levy against it.

Mr. Clarke:

For instance, for the first year, 1937-38?

Mr. Adams:

It has 5.78 as to 1937-38, and it also has .12 against it, making a total levy against non-exempt—non homestead exempt property of 5.9.

Mr. Clarke:

Now, wherein does the exempt property have the 6 mill levy, or the 6 mill less the .1 that you have deducted for writs and agreements?

Mr. Adams:

The exempt property is included in the assessed value of Column "H" and as against it, a millage of only 5.78. There is no millage against the exempt property for the servicing of the second series. The exempt property has an advantage of a discount in its millage of .12 in that year.

Mr. Gibson:

Mr. Adams, let me ask you this by way of explanation. Your published plan, under Section 9, makes provision for various contingent fees, but it comes out very affirmatively and says "But in no event—in no event shall the taxes required in Section 8 be reduced". Now, you are departing from that, aren't you?

Mr. Adams:

No.

Mr. Gibson:
Well, now, Section 8 is the section that says "A minimum of six mills for 1937-38", and the scaling on upward.

Mr. Adams:
For servicing the full amount of bonds treated of in Ordinance 269.

Mr. Gibson:
But it says in no event—in no event shall that 6 mills be lessened. Now, let me ask you one more question there.

Mr. Redfearn:
It wasn't lessened.

Mr. Adams:
This is argument.

Mr. Gibson:
Well, just by way of explanation, the bonds that you cancel, do you make a corresponding reduction in the 6 mills for those bonds?

Mr. Adams:
No.

Mr. Gibson:
You don't make a reduction there?

Mr. Adams:
No. You overlooked a point—

Mr. Gibson:
I didn't overlook a point; I am just asking you—

Mr. Adams: (Interrupting):

No, it's only when retirement of bonds for the T. P. C.s come into their full value, and that's the purpose of the plan. The retirement of the bonds does not take them out, but as a matter of law and the power of the City, the City can not levy this minimum millage to service a bond which is being serviced by another special tax levy under order of the Court.

Mr. Gibson:

But you are levying millage—

Mr. Adams: (Continuing):

And therefore, the percentage of bonds that are being serviced under special tax levies are removed from the total amount, and from the minimum millage in that ordinance.

Mr. Gibson:

But you are levying taxes for bonds that have been cancelled.

Mr. Adams:

Yes, sir, that's the value of the plan.

Mr. Redfearn:

That's for the benefit of the T. P. C.s.

Mr. Warren:

May I ask Mr. Shaw one question?

The Master:

Gentlemen, we are getting into an awful mix-up here and I have admitted Exhibit 27 for what it is worth. I am not prepared to rule on the proper interpretation of those ordinances and I do not intend to rule on them

at this time, so it seems to me that all of this ought to come up when we come to the question of the interpretation of those ordinances.

Mr. Warren:

This question, if the Court please, doesn't relate to that particular phase of it, and I would like to ask this question of Mr. Shaw.—Mr. Shaw, in making Exhibit 22, Exhibit 27 and Exhibit 28, did you take into consideration the amount levied which Mr. Adams has just called special tax levies for debt service?

A. That was this exhibit, Mr. Warren? (Exhibiting document to counsel.)

Mr. Warren:

Yes, sir, that one.

A. That graph, Exhibit 28, shows the actual experience of the City. That is, it is actual levies for the years 1936-37 through 1939-40. The information—and I neglected to say this in my previous description—was taken from the levy ordinances of the City.

Mr. Warren:

What I understood about all these exhibits, 22, 27 and 28, was that they were based upon the plan, and that any extra taxes which were levied were not taken into consideration in your calculations. Now, show me where, on 22 or 27, those additional levies which I understand to have been 1.8 mills in 1939 are taken into consideration or calculated.

A. I'm sorry to say I didn't make that clear. I overlooked that in my previous description. Those levies do not appear upon those schedules. The levies can be shown in a schedule and I will do so if you like.

Mr. Warren:

Then these levies do not reflect the actual tax collections of the City in toto, but only in conformity with the plan; is that right?

A. These do not attempt to reflect tax collections. They reflect the total tax levies.

Mr. Warren:

I mean tax levies. All right; correct my question.

A. Now, through 1939-40 they show the actual total levies.

Mr. Warren:

Including that for—

A. (Continuing) Including that for special levies. For the year 1941-42 they pick up the figures of the Exhibit 27.

Mr. Adams:

Is that on the assumption that the entire refunding plan is in operation?

A. On that assumption, yes, sir.

Mr. Warren:

Under "I" you have—under "M", you have—you have 5.78 under "I" and under "M" you have .12. Now, does that include that 1.8 of special levy?

A. No, sir. Exhibit 27 attempts to show only the operations of the refunding plan, and excludes the special levies, and in those first years the securities representing those special levies.

The Master:

Gentlemen, let's proceed with the testimony.

Direct Examination (Resumed).

By Mr. Adams:

Q. Mr. Shaw, have you made a graph showing of the operating and debt service per capita, and the population growth that you have testified about?

A. I have, Mr. Adams; I have it here.

Mr. Adams:

We offer that as Exhibit 29. Let me ask him some qualifying questions on it.

Q. Is that line on this Exhibit 29 denominated "Population" representing the growth of population as set out in your chart, Exhibit 22?

A. It is, sir.

Q. Explain the source of the figures resulting in the line denominated "Operating Per Capita".

A. Those figures are based upon the operating taxes calculated as in the manner which I described in describing the last preceding Exhibit No. 28, and the population figures shown on Exhibit 22. The curve represents the operating taxes so calculated, divided by the population estimates. For the debt service per capita curve, the total levy from Exhibit 27 has been divided by the population figures on Exhibit 22.

The Master:

You are now offering this exhibit?

Mr. Adams:

Yes, sir.

Mr. Clarke:

May I ask where the 1940—oh, you began with 1940. Excuse me.

A. Yes. I began with 1940.

The Master:
Were there any objections to Exhibit 28?

Mr. Clarke:
I would like to make the same objection, and renew our objection to Exhibit 27, and make the further objections and renew those objections to 28 and 29, and the further objection as to 28 that it doesn't follow 27 as to the first five years, according to the testimony of the witness.

The Master:
The exhibits will be admitted for what they are worth. The objection is overruled.

(Instrument marked in evidence as Petitioner's Exhibit No. 29.)

Q. Mr. Shaw, in Exhibit 27 we showed the debt service burden subsequent to the past current fiscal year of 1939-40 on the assumption that the refunding plan was completed 100%. Have you made a study from the original records of the City of what those debt service millage requirements will be between the fiscal years 1940-41 and 1956-57 to service the outstanding bonds of the City as they now exist, including, of course, refunding bonds that are outstanding and old bonds that are outstanding, and the peremptory writ levies that are now in force relating to some of the old bonds?
A. I have, Mr. Adams.

Mr. Adams:
We offer this study as Exhibit 30.

Q. Will you please explain this exhibit?
A. The first column of the exhibit shows the fiscal years covered.

Q. Now, just one second. Explain the amount of the assessment—the estimated amount of the assessment rolls in those future years. What was used there?

A. The assessment rolls as depicted in Exhibit 22. Shall I go ahead, Mr. Adams?

Q. Yes, sir.

A. The first column shows the fiscal years covered. The second column shows the amount in the first line of the unrefunded bonds now outstanding and the interest thereon.

Q. As of what date?

A. As of June 30, 1940. The succeeding figures in respect to each fiscal year show the amounts of principal of unrefunded bonds and interest thereon, maturing in the fiscal years indicated. The next column of the exhibit styled "Existing Mandatory Levies" shows the amounts calculated upon the assessed valuations from Exhibit 22, to be necessary to retire the existing special levy writs. The last dollar column is simply a total of the two preceding columns and shows the total requirement for each of the years. The column "Required Millage" shows the millage necessary upon the assessed valuations of Exhibit 22 to produce the total requirement. The millage of 15.57 shown for the fiscal year 1940-41 is 62% above the present levy, and would produce a total City millage of 35.57.

Q. Now, what does the present levy you refer to cover? You have on this chart a required millage of 15.57 for the fiscal year of 1940-41 to service the debts listed on this Exhibit 30. Now, you said that together with the present millage makes 35.57 mills. What is that existing millage?

A. The existing millage covers the operations of the City—the tax for the operations of the City, the levy for the refunding securities of both classes, the existing levy for the existing mandatory writs. In short, all of the tax income and requirement of the City.

Mr. Clarke:

Mr. Shaw, that results in putting the mandatory levies in twice as to this year, doesn't it, because you are already levying for them and you have included them in this schedule.

A. Let me think of that, Mr. Clarke, for a moment. I have been working until midnight for a good while on this and I prepared this about one of those midnights.

Mr. Clarke:

You might look that up and let us know later. I'll ask you on cross examination about that.

A. No, I can answer now, Mr. Clarke.

Mr. Clarke:

You can tell us the name of the gentleman who gave you the answer.

A. Mr. H. B. Jackson, Chief Accountant of the City of Coral Gables, and the man who can give most of the answers.

Mr. Warren:

Mr. Shaw, does this millage reflected here in the last column of Exhibit 30 take into consideration—is that additional millage or does that take into consideration the diminution of the levy for refunding bonds which are represented by these bonds which you are going to levy for?

A. It does not, Mr. Warren, but that would represent a difference of only 3.98% of the levy for the refunding issues which would be .24 mills.

Mr. Warren:

Then that would be a duplication of taxation for the same debt?

A. I believe you are correct.

Mr. Gibson:

To what extent, now?

A. .24 mills.

Mr. Berry:

Mr. Shaw, referring to Exhibit 30, the first line of the figures fiscal year 1940-41 followed by the title "Unrefunded bonds and interest", the first line being $312,065, does that represent bonds maturing during that fiscal year, or all bonds which have matured prior thereto including the maturities if any during that year?

A. It includes everything which had become due during or prior to June 30, 1941.

Mr. Berry:

Now, taking the second line fiscal year 1941-42, with the figures $39,057.50 following, does that indicate unrefunded maturities which occur during that fiscal period?

A. It does, both as to principal and interest.

Mr. Berry:

And that is true for the succeeding figures in that column?

A. That is correct, Mr. Berry.

Mr. Gibson:

Mr. Shaw, may I ask you one thing. The figures in the first column there "Unrefunded Bonds and Interest" are exclusive of the mandatory levies, are they not?

A. They are.

Mr. Gibson:

In other words, your third column of figures includes the mandatory levies?

A. That's right, the third column includes all items.

The Master:
Proceed, Mr. Adams.

Direct Examination (Resumed).

By Mr. Adams:

Q. Mr. Shaw, in the course of your cross examination have you discovered any error in your direct examination regarding the millage requirements shown by this chart?

A. I have, Mr. Adams, and would like to make a correction of .24 mills in the rate I previously mentioned for the year 1940-41. This should be "35.33".

Q. Now, let me get it clear. The 35.33 millage for the fiscal year 1940-41 includes operating expenses, servicing of the outstanding refunding securities, servicing of the existing mandatory levies shown in Exhibit 30, and servicing of the past due unrefunded bonds and interest shown in Exhibit 30.

A. It does.

Q. It is the total for all of those?

A. That's right.

Q. With no duplication of levies for any items?

A. No.

Mr. Gibson:
In other words, your worst year, to-wit, 1940-41, would be an aggregate of 21.33 for debt service levies?

A. Yes.

Mr. Gibson:
And thereafter, your worst year would be 8.69, is that not true, for debt service?

A. I haven't figured it, Mr. Gibson.

Mr. Gibson:
Well, I just added the 6 points to this, and took off the .24 error.

(Thereupon, there was discussion had, which was off the record.)

Mr. Adams:

By agreement of counsel, the witness will refigure the tendered Exhibit No. 30 as to the last column and tender it again later in its corrected form.

The Master:

And the tendered exhibit is now marked Exhibit 30 and will be substituted for by the corrected copy after it has been prepared and presented.

Q. Mr. Shaw, had you completed your testimony regarding the money columns in this Exhibit 30? Is there anything else you want to explain? If so, please state it.

A. I believe that Mr. Gibson had asked me a question that I had not answered. What was the question?

(Thereupon, the following was read to the witness: "Question: And thereafter your worst year would be 8.69, is that not true, for debt service?" and the Answer: "I haven't figured it, Mr. Gibson," and Mr. Gibson said: "Well, I just added the 6 points to this and took off the .24 error".)

Mr. Gibson:

If you just say "Yes" that will be enough.

A. No, I don't think I would say that. I don't have to refigure my answer to that. I am ready to make it. That would be the case if the bare showing of this exhibit were assumed, but the advance of 62% in tax rate would increase delinquency and require the levy of even higher millages upon the remaining collectible portion of the assessment roll in order to service these debts and the operations of the City.

Mr. Gibson:

I don't think the answer is responsive to the question. On the basis of your schedule, your total debt service tax levy for the year 1941-42 would be 8.69; is that not true?

A. That is true, assuming the collectibility, as set forth—

Mr. Gibson:

I object to him assuming anything as—

The Master:

Well, I am going to let him answer.

A. Assuming that collectibility set forth in Exhibit 22.

Mr. Gibson:

And that would be the highest debt service levy you would have to resort to subsequent to the year of 1941, assuming that 1941 and prior years were gotten out of the way?

A. No.

Mr. Gibson:

Is that not correct?

A. No, I will not make that assumption, because of the fact that we could not expect the collectibility represented by Exhibit 22 if our taxes were so sharply increased in any year.

Mr. Gibson:

But assuming that the taxes for 1940-41 were gotten out of the way, that is, the debt service requirements for that year had in one way or another been met, then for the subsequent years the maximum amount you would have to raise would be 8.69; is that not correct, based on this schedule?

A. That is too broad for me to answer at this time, without study.

The Master:

Mr. Gibson, isn't that just a matter of figuring, which counsel can do and submit to the Master?

Mr. Gibson:

I guess so, Your Honor.

(Note: At this juncture of the proceedings, at 11:25 A. M., Mr. Lea arrived at the hearing.)

A. I would like to point out one other feature of this Exhibit 30. The levy for the years 1940-41 has been made, and without taking into account the figures shown for that year, or millage shown for that year in this schedule, this schedule was prepared to depict the condition as of June 30, 1940. Now, since the levies for the maturities prior to June 30, 1940, and those of the year 1940-41 would have to be deferred a year, these would in the practical situation fall on top of those for the year 1941-42, creating for that year a requirement of $405,508.37, which would require a millage of 17.81, or a 73% advance in the tax rate for the City.

Mr. Warren:

Mr. Shaw, those figures you have just testified to are based upon the present figures as you have got them figured here, aren't they?

A. Sir?

Mr. Warren:

That 73%, that's based on the present millage that you have here, isn't it? You haven't refigured all that, have you?

A. Yes; that is correct, but it would be only a fractional change in the percentage. I doubt if it would bring it below the 73%. I dropped the fractions there in figuring that.

The Master:

Gentlemen, it seems to me that you had just better suspend on this exhibit until you get the corrected exhibit here. I confess I am absolutely confused about it. I don't know what all this testimony will mean when we get that new exhibit.

Mr. Gibson:

That's all right.

Mr. Warren:

I think that will help matters to a great extent.

The Master:

Gentlemen, let's try to avoid cross examination as we go along. You gentlemen have been asking a good many questions and prolonging the cross examination, and I am going to have to rule that out if it continues.

By Mr. Adams:

Q. Mr. Shaw, have you made any study of the tax rates of other towns in the Miami area in relation to the tax rates in the City of Coral Gables?

A. I have, Mr. Adams.

Q. In making that study have you consulted with the officials of the other towns and examined or received from them reports of what their official records show?

A. I have.

Mr. Adams:

We want to offer at this time certificate of Sylva G. Martin, the City Clerk and Tax Assessor and Tax Collector of South Miami.

Mr. Lea:

We have no objection to this if he will bring the man over here for our cross examination.

Mr. Adams:
We will be glad to do that.

The Master:
The exhibit will be admitted subject to the right of cross examination by opposing counsel.

Mr. Warren:
That's No. 31, isn't it?

The Master:
Yes, sir.

(Instrument marked in evidence as Exhibit 31 of Petitioner, subject to cross examination.)

Mr. Adams:
We offer as Exhibit No. 32 a similar certificate by Mr. J. A. Michael, town clerk, tax assessor and tax collector of the town of Miami Springs.

Mr. Lea:
The same reservation as to this, subject to cross examination.

The Master:
The exhibit will be admitted subject to cross examination.

(Instrument marked in evidence as Petitioner's Exhibit No. 32, subject to cross examination.)

Mr. Adams:
We offer a similar certificate by Mr. W. D. Roberts, Town Clerk, Tax Assessor and Tax Collector of the town of Surfside.

Mr. Lea:
The same reservation as to that.

The Master:
That's Exhibit 33. Admitted on the same terms, subject to cross examination.

Mr. Gibson:
This is subject to further motion to strike for irrelevancy, too, isn't it, Your Honor?

The Master:
Yes, of course.

(Instrument marked in evidence as Petitioner's Exhibit 33, subject to cross examination.)

Mr. Adams:
We offer as Exhibit 34, similar certificate of C. Lawton McCall, Village Manager, Tax Assessor and Tax Collector of Miami Shores Village.

The Master:
Admitted, subject to cross examination, as Exhibit 34.

(Instrument marked in evidence as Petitioner's Exhibit No. 34, subject to cross examination.)

Q. Mr. Shaw, have you prepared from this study from the original records of the cities in Dade County a chart or graph showing the amount of taxes on several standard pieces of property as shown on the chart to show the relation of the taxes in the Gables and these other towns?
A. I have, Mr. Adams.

Mr. Adams:
We offer this chart as Exhibit No. 35.

Mr. Warren:

We object to that because it is based upon hearsay. There is nothing here to show what type of properties were considered, and there is no sufficient identification or explanation of the exhibit for the Court to determine whether it is admissible or inadmissible.

Mr. Clarke:

And on the further ground that it is not shown—the financial condition of the several cities is not shown; it is not shown whether those cities have any debt or no, and on the further ground that the cities picked are not shown to be representative of all of the communities in this section, and affirmatively shows that they have picked out certain communities, and on the further ground that the basis of the information is not shown.

The Master:

Do you expect to give any explanation of this?

Mr. Adams:

Yes, sir.

The Master:

Just note the objection.

Q. Mr. Shaw, will you please explain the source of the information, and the preparation of this Exhibit No. 35?

A. The information upon which it is based was secured from the City Clerks, Directors of Finance, Tax Assessors and/or Tax Collectors in these several communities as to their millage, their percentage of assessment, and the division of the millage between that levyable upon homestead property and that levyable only upon the non exempt property. From that information I calculated the taxes for certain representative value items. The type

of building has no bearing upon it, whether it is a store or a residence. The value represented here would be the full value of the building, and the tax would be the same regardless of what class of building it were. The figures shown opposite the name of each Town in here of the brackets represent the tax. The bars represent, pictorially, the relation of the tax to that of Coral Gables on a building of the same value. Some of these Towns have no debt, which accounts for the fact that no bars exist as against certain of the brackets. The item for South Miami in the $10,000. bracket, for a $10,000. homestead exempt building, would appear on their roll as $5,000., and would bear no tax, there being no debt service levy in that city. In the $5,000. homestead exempt bracket, the cities of South Miami, Miami Springs, Miami Shores and Surfside would have absolutely no tax. On $1,000. of value, non exempt in these towns, the tax would be, respectively, Coral Gables, $22.00; Miami, $17.55; South Miami, $17.25; Miami Springs, $12.00; Miami Shores, $12.00; Miami Beach, $13.56; Surfside, $7.57. This would also represent the adjusted tax rate of these cities; that is, adjusted to full value. Some of these cities assess property at only a fraction of its full value, and to make any direct comparison, that factor must be taken into account, and the tax rates or taxes must be expressed in terms of actual full value of the property. This exhibit shows the City of Coral Gables today to be higher in taxes in all of these brackets shown than any of the other communities named on this chart.

Mr. Warren:

I move to strike the answer; it is not in explanation of the chart or how he arrived at the chart, as I understand the question.

The Master:

Let him finish his answer.

A. (Continuing) And this is also true of the other municipalities of the Miami area which have not been shown, because they are the smaller and less consequential ones, and we have chosen here those cities which we think have some direct comparison with Coral Gables.

Q. Are these cities shown on this chart the communities in this area which are in competition with the City of Coral Gables for new residence and new buildings?

A. They are, Mr. Adams, the chief competition, particularly Miami Shores, Surfside and some parts of Miami Beach. The closest competition arises from Miami Shores and Surfside.

Q. What are the names of some of the other smaller towns you refer to in the Miami area that are not included in this comparison?

A. Biscayne Park, North Miami, North Miami Beach, Opa-Locka, El Portal, Golden Beach. I believe that is all.

Q. Isn't Hialeah in that group?

A. And Hialeah.

Mr. Gibson:

How about Homestead?

A. No. I refer to the metropolitan Miami area.

Q. Now, those towns listed by you are, I believe you say, largely very small communities. How about Hialeah, and why is not it included in the comparison?

A. I do not believe that the nature of Hialeah makes it competitive or comparative to Coral Gables. Hialeah is largely a city of small frame homes, and is not directly comparable to Coral Gables or these other cities shown on this chart.

Q. Now, Mr. Shaw, have you prepared—

Mr. Clarke:
Just a minute, Mr. Adams. I would like to get this clear in the record. Mr. Shaw, did you prepare this yourself, or did someone else?
A. I prepared it.

Mr. Gibson:
Has Mr. Shaw qualified himself as a real estate expert in this record?

Mr. Adams:
I don't think it is involved.

Mr. Haycock:
This is not based upon his appraisal of the property.

Mr. Gibson:
It certainly is.

Mr. Haycock:
It is not; it is based on information furnished him.

The Master:
Let counsel conclude, and I will consider the objection.

Mr. Adams:
That's all we have as to this chart.

The Master:
All right; go back to your objections.

(Thereupon, the objections heretofore stated by counsel directed to the admission in evidence of Petitioner's Exhibit 35, as set forth on Page .... hereof, were read by the Reporter.)

The Master:
You renew those objections, all of them?

Mr. Warren:
Yes, sir. And the further ground that each type of property set forth is based on a single one of those types of property and is not a composite of a number of properties in the same situation.

Mr. Gibson:
I want to add this further objection; that this chart represents a conclusion of the witness, who is not qualified as a real estate appraisal expert; by the witness' explanation, it is based on information from various officials of various communities, and is manifestly and admittedly hearsay. The chart itself does not provide any method of checking, or ascertaining its verity; it does not permit of any cross examination, and a review or analysis of the property involved, and it is totally incompetent as evidence of the respective tax burden on like property in various communities.

Mr. Adams:
Speaking to these objections, I want to call the Master's attention to the fact that the certificates of the City Clerks, Tax Collectors and Tax Assessors of the four towns filed contain the supporting data for the amount of tax shown in this exhibit in those several towns.

Mr. Warren:
Except Miami and Miami Beach.

The Master:
Where are those certificates? Have you introduced them yet?

Mr. Adams:
Yes, sir; Exhibits 31 to 34, inclusive.

Mr. Warren:
Except Miami and Miami Beach; that is not in the record.

Mr. Adams:
Certificates covering the tax levies in South Miami, Miami Springs, Surfside and Miami Shores Village.

The Master: (To Witness):
Are these figures which you have shown in the tendered Exhibit 35 taken from these certificates which have been filed as Exhibits 31 to 34, Mr. Shaw?
A. The figures shown there, Your Honor, are calculated for identical figures with those in those exhibits.

The Master:
What I am trying to get at is—

A. (Interrupting)—Those exhibits show the total millage, whether there is a levy against the non homestead property, and the percentage of the full value by which the roll is computed. From those three factors I have calculated the taxes shown on Exhibit 35.

Mr. Gibson:
You selected a typical piece of property from each community, didn't you, for this?

A. No, sir, I didn't select a property. I selected a unit of value. There is no property—specific property necessary to represent this. I say that if you go to any of these cities you will find—there may be a matter of cents of difference because of the method of calculation in that city

as against my computation, but it would only be cents, and you will find that all of the properties representing any one of these value groups would show the tax, or the very closely approximate tax, within, I should say, cents, that I have calculated for that value group, whether those properties be stores, apartments, hotels, residences or vacant lots.

The Master:

Now, in explaining this Exhibit 35, you said that it was based on information procured from the officials of these various towns?

A. I did.

The Master:

Which would be clearly hearsay. But do I understand now it is based on the information contained in these Exhibits 31 to 34?

A. Your Honor, I actually went to those officials and secured the information from which I made that. The exhibits 31 to 34 support that by expressing in certificate form the information upon which I made this chart.

The Master:

Well, what I want to know is, is the information upon which you based this chart, Exhibit 35, contained in the Exhibits 31 to 34?

A. Yes, sir.

Mr. Gibson:

In what manner?

The Master:

Well, I am not going into that now. The exhibit will be admitted.

(Instrument marked in evidence as Petitioner's Exhibit No. 35.)

(Thereupon, at this juncture of the proceedings, it being 12:00 o'clock noon, a recess was taken until 2:00 o'clock P. M., at which time the hearing was resumed and the following proceedings were had):

Upon the reconvening of the hearing at 2:00 o'clock P. M., by agreement of counsel and with the consent of the Master, the witness G. N. Shaw was temporarily withdrawn from the witness stand in order to permit the Petitioner to introduce the evidence of the following three witnesses.

500 CHAUNCEY RAND BUTLER was called as a witness on behalf of the Petitioner, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Adams:

Q. Please state your full name and residence.

A. Chauncey Rand Butler, 541 Hardee Road, Coral Gables.

Q. How long have you been a resident of Coral Gables, Mr. Butler?

A. Approximately four years.

Q. What business are you now engaged in?

A. Director of the Federal Housing Administration in this district.

Q. Is that the Government housing administration?

A. Yes.

Q. How long have you been serving in that capacity, Mr. Butler?

A. As a director, about three years, but I have been with the Administration for about six and a half, since its inception.

Q. In what territory has your three years' service as Director been?

A. In this territory.

Q. What about your prior three years of service?

A. I opened this office up as Chief Underwriter in 1935, about April, I believe. Then it was closed, and I went to Jacksonville, with jurisdiction over the State, with headquarters at Jacksonville.

Q. When did you return?

A. I returned here in about November, I think, of 1935.

Q. And where have you been since November, 1935?

A. I have been here continuously since then.

Q. Mr. Butler, has your office been handling F. H. A. loans on properties in the City of Coral Gables?

A. For about the last four and a half, five years, yes.

Q. In the beginning, in 1935, then, do I understand that they did not handle any loans?

A. No, we didn't handle loans in Coral Gables until sometime—it was either in the latter part of '35 or the first of '36; approximately just in about that time.

Q. Was that, or not, because of the lack of applications?

A. No. We had a number of applications.

Q. State why loans were not handled in the Gables.

A. It was due entirely to the uncertainty of your tax situation.

Q. Has that policy of handling loans been changed by the F. H. A.?

A. We made a gradual change. After talking with a number of your city officials, in which, if I remember correctly, along about the first of 1936, they assured us that some equitable adjustment would be made. They couldn't give us any assurance of what it would be. We attempted by rule of thumb and yardsticks to place a liability against

each piece of property due to this uncertainty, and in making our appraisals we automatically penalized every piece of property from $500.00 to $1,000.00.

Q. To protect against what?

A. Against the uncertainty of what this settlement might or might not be.

Q. Now, you speak of a settlement. Do you mean by that the settlement of the bonded indebtedness of Coral Gables?

A. Bonded indebtedness; that's right; and your eventual tax structure.

Q. After the partial refunding of the bonded indebtedness, was there any change in policy of the F. H. A.?

A. Yes; after that had been tentatively agreed upon why then we went along, still on a reduced basis, but of no set amount. There was a penalty reflected, depending largely on the type of house, and the size, and the area in which it was located.

Q. Do you know the present degree of the execution of the plan of refunding now?

A. You will have to elaborate on that just a little bit.

Q. Do you know what percentage of the whole debt has been refunded by exchange for refunding bonds at the present time?

A. I have that. Not here; but it is available to us in the office, yes.

Q. Have you used that in your present discounts of values?

A. Yes.

Q. What is the present discount in the amount of the loans made for?

A. I don't believe I could give you a percentage, or a flat figure. We do—most of our work is based on comparisons. Take a typical house in an area that has a very favorable tax structure, as compared to the typical house in an area that has not, the same amount of mortgage is

not granted on the two, but as to whether it is a 2% or 3% or a 5% is not a figure that we use. It is a sort of an arbitrary figure we take as a whole, and on each individual property.

Q. What effect upon the policy of the F. H. A. would the 100% completion of the Coral Gables refunding plan have?

A. As it stands today?

Q. Yes, sir.

A. That would remove any doubt in our mind as to your eventual tax structure, and I think you would be on a favorable basis with other municipalities in this metropolitan area.

Q. Those comparisons you speak of as in considering a loan in the City of Coral Gables, are they comparisons with comparable properties in the other towns of the Miami area?

A. Yes.

Q. Do you extend those comparisons beyond the Miami area?

A. No. We could say Dade County.

Q. Dade County?

A. Yes.

Mr. Adams:

We tender the witness for cross examination.

The Master:

Do you gentlemen wish to cross examine at this time?

Mr. Gibson:

I didn't understand, Your Honor, we were going to cross examine anybody; I mean, at this time.

Mr. Adams:

I didn't understand the decision would apply to all witnesses.

Mr. Gibson:

I thought that was the general understanding with everybody, that there would be no cross examination of anybody at this time.

Mr. Warren:

It is conceivable we will have no cross examination of this witness.

(Witness excused.)

505 A. B. CURRY was called as a witness on behalf of the Petitioner, and being first duly sworn testified as follows:

Direct Examination.

By Mr. Adams:

Q. Please state your full name and place of residence.

A. A. B. Curry, 3600 Toledo Street, Coral Gables.

Q. What official position do you hold in the City of Coral Gables?

A. The City Manager.

Q. How long have you been City Manager?

A. Since November, 1939.

Q. Were you employed by the City in any other capacity prior to that time, and if so, how long?

A. I have been Director of Public Service since July, 1935.

Q. As Director of Public Service state whether or not the maintenance and upkeep of the streets and other properties of the City came under your jurisdiction.

A. As Director of Public Service the improvement and maintenance of all streets, sanitary conditions and building construction came within that department.

Q. As City Manager, are you the general head and responsible party in those departments?

A. I am head of all departments.

Q. State whether or not in those official capacities you have made a study of the present condition of the streets, parkways, and necessities for any additional municipal services to the City.

A. I have.

Q. Please state what that condition is and what the present demands are.

A. The majority of streets in Coral Gables had no maintenance since the boom days. Our records show that the last maintenance, with the exception of a minor improvement, were made in 1925, and the early part of '26. I beg your pardon. In 1926 and the early part of 1927. In the year 1935 a slight program of resealing the streets was carried on through the Gables.

Q. Approximately what percentage of the streets did that program affect?

A. Less than 10%. As a result, the general condition of the streets are bad. With the type of pavement we have in Coral Gables, which is called a lime rock base, sealed with liquid asphalt, the asphalt at this time has deteriorated so that it no longer seals the streets, and is making excessive maintenance cost. Although the riding qualities of most of the streets are in poor shape, we feel that we would not be able to, except in some cases, to repave, but to preserve the streets we must give them an application of three-tenths of a gallon per square yard of asphalt to preserve the existing streets The improved paving in the City, which will require what is known as a reseal, amounts to 1,047,231 square yards, at a cost of ten cents per square yard, a total of $104,723.10. The main thoroughfares and boulevards must be brought up to a better surface and would have to be repaved, and that amounts to 473,656 square yards at a cost of fifty

cents per square yard, or $286,678.00. There are 138,290 square feet of sidewalk which must be replaced at a cost of twenty cents per square yard, or $27,658.00. There are 81,300 square yards of parkways to be improved that are now being built on as residences—

Q. Do you mean, that front properties that are now being built on?

A. Yes; fronting properties that are now being built on. At a cost of forty cents per square yard, or $32,520.00. There are 284,000 square yards of parkways which must be top-soiled in order to maintain the grass that is now on them, at a cost of ten cents per square yard, or $28,400.00. The type of bridges we have in Coral Gables were built during the boom, and are what is known as timber bridges, with timber piles. In three instances these bridges have been brought up to a safe condition by driving additional piles and new floorwork. The life of an untreated timber bridge in this climate and brackish water is very seldom over ten years. This necessitates the building of nine permanent bridges of concrete abutment style, through girder type bridge, at a cost of $108,000.00. Due to the development of the Canal, one bridge at Hardee Road must be a draw-bridge, at an estimated cost of $65,000.00. In order to give access to the Canal as it is now being developed by private interests, the City will be forced to dredge an entrance to the Canal at an estimated cost of $25,000 for the dredging only. We haven't had sufficient time to study what additional bulkhead may be required. Sanitary conditions in Coral Gables—

Q. Pardon me just one second there, Mr. Curry, and let me pick up some items. These sidewalks that you say need repair were constructed when?

A. In 1926, and earlier. They have been destroyed by the poor construction during the boom days, and by the upheaval of roots from trees growing in the adjacent parkways, and by deterioration over a number of years.

Q. The record shows that there are many vacant lots in the Gables. What has been the policy of landscaping and maintaining parkways in front of the vacant property?

A. On account of the scattered building we have had to maintain parkways in front of the vacant property.

Q. Is that done when there is no house in the block at all?

A. In many instances, yes.

Q. Is that done where there is no house on either side of the street?

A. Yes.

Q. Is it done all over the Gables, or are there substantial areas where there is no expense—or, no maintenance carried on as to parkways?

A. There are large areas in Coral Gables, particularly that area bounded on the north by Bird Road and the south by the railroad that are not improved except in two through highways, and there are no improvements in that area excepting the improved highways.

Q. Do these figures contemplate an extension of this parkway work to cover every parkway in the City?

A. No.

Q. Do they merely contemplate the bringing up to a reasonably good state of repair the present parkways? That is, those parkways which are presently being worked on in some degree?

A. Well, all of the before mentioned work, excepting the bridges, and the 81,000 square yards of parkways to be improved are necessary maintenance in order to preserve the improvements that are already there. The 81,000 square yards of parkways to be improved are necessary by the additional building program that is going on in the Gables.

Q. And prior to this time there has been no work on that area of parkways?

A. That's right.

Q. Now, as to the conditions of the streets that are sealed with liquid asphalt, what if any change will take place in that if they are permitted to run indefinitely?

A. They will deteriorate and you will lose the entire street.

Q. What effect does long continuation have upon the cost of rehabilitation and maintenance?

A. If they are allowed to go much longer, and by much longer I mean in the next two or three years at the very most, it will necessitate ripping the entire street, adding additional rock, and raising our cost from ten cents a square yard to fifty cents a square yard for repaving.

Q. Now, you mentioned the development of the canals, and said that was by private individuals. Is the City expending any of its operating revenues on this canal work?

A. None whatever.

Q. Only on the bridges spanning the canal at the streets?

A. Yes, that you must keep in a safe condition to protect life and limb.

Q. All right; go ahead with your next item.

A. The sewage system in Coral Gables is taken care of entirely by septic tanks. That is, each building must provide its own sewage system. Congested building in the business district and in some of the residential districts will compel us in the very near future to install sewers, and a sewage disposal plant. On account of the scattered area of Coral Gables, the first unit would only be built in the congested area. The largest expenditure, of course, would be on the first unit, necessitating us to build a sewage disposal plant, a long trunk line to the disposal plant, and pumps. The first unit is estimated at a cost of $460,000. Each additional unit would have to be taken and estimated on its own merits.

Q. How long a time do you think that first unit would take care of the situation?

A. At the present building, the first unit would take care of the next ten years. We have already been warned by the state sanitary inspector that we could not continue with our present system of septic tanks in the closely built area along Ponce de Leon Boulevard.

Q. Are there any other features of the City's municipal functioning that are in bad need of repair and maintenance, or increase or enlargement?

A. Our fire department at the present time are using truck that were purchased in 1925. These trucks were rebuilt, two of them, two units, were rebuilt this year by a factory representative who said that they would give us service for a possible four years more, and at that time we would be compelled to purchase at least one new unit at a cost of approximately $15,000. The other equipment, of course, will take care of itself from year to year through the operating budget.

Q. Do you know whether or not the fire equipment which you state was rehabilitated, has the same capacity for service that the modern, new fire equipment has?

A. Naturally it is not as efficient as the new fire equipment; it has the same capacity of pumping as one we would order, but it is more costly to operate.

Mr. Adams:

That's all. And, I take it you reserve cross examination on him.

The Master:

You will be called on to come back for cross examination, Mr. Curry. At some future date you will be notified.

(Witness excused.)

512 M. B. GARRIS was called as a witness on behalf of The Petitioner, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Adams:

Q. Please state your full name, place of residence, and occupation, if any.

A. M. B. Garris, Civil Engineer. Residence at 1822 Country Club Prado, in Coral Gables; offices, 1213 Congress Building, Miami, Florida.

Q. How long have you been in the engineering practice here in Dade County?

A. Since May, 1916.

Q. Have you ever served in any official capacity in the City of Coral Gables?

A. Yes; about eight years as Commissioner.

Q. Mr. Garris, are you familiar with the streets, parkways and bridges of the City of Coral Gables?

A. I certainly am.

Q. Please state to the Court there what you know of the type of construction, their present condition, and in as much detail as you can, about them, and the cost to put them in a reasonable state of repair.

A. Well, the streets of Coral Gables were built, or completed, along about 1925 or 1926, and they are an ordinary oiltreated road or street; they were put down during the boom and wasn't put down very well when they were put down. Some of them are rather thin in depth or thickness. A good many of those streets, in my opinion, should be resealed or reoiled to preserve them. I might state in this connection that they are made out of oleatic lime stone, and if water accumulates on them the pounding of traffic will cut holes in it or pulverize the material, and it is necessary to patch the road with oil and sand to keep it in shape. Some of those streets that are muchly

traveled, like Alhambra Circle and Ponce de Leon, and various other heavy-traveled streets are very, very rough, and in my opinion should be treated with an asphaltic top, or retread. I have estimated in the repaving, and by that I mean retread, or topping with asphaltic pavement, about 473,656 square yards of repaving, which I estimated would cost about 50 cents a square yard, or a total of $286,678.00. The oiling of the streets—and when I speak of the streets I mean all of the streets north of Sunset and none south of Sunset, or none down towards Chapman Field; there is about 1,047,231 square yards of oiling, or resealing, at ten cents a square yard, or $104,723.10. There is about 138,290 square feet of sidewalk at about twenty cents per square foot, to rebuild. That is, some to be rebuilt, and some to be added, because there is a lot of sidewalks that wasn't completed. That's $27,658.00. There is about 81,300 square yards of parkway to be built that never was built. I would estimate that at about forty cents; that's $32,520.00.

Q. Is the area where you—

The Master:

Wait a minute. Are you through?

A. No.

The Master:

I didn't think he had finished his answer. Let him finish his answer before you ask him any questions.

A. There is 284,000 square yards of top-soil—that's applying about two or three inches of top-soil over that rock surface where you could plant grass, because you couldn't plant it on that rock and make it grow, and at ten cents a yard, I would estimate, that's $28,400.00; making a total up to that point of $479,979.10.

The Master:

Just a minute, now. Did you want to ask a question, Mr. Adams?

Mr. Garris:
No; I haven't finished yet.

Mr. Adams:
That's all right; go ahead.

A. In my opinion, —in fact, in order to use the Coral Gables Waterway at all, it would become necessary to rebuild Hardee Road with a draw-bridge to replace the old bridge, and in this connection, I understand that the Ingram Highway bridge will be replaced by a draw-bridge, paid for by the County, removing the arch bridge at the entrance entirely, and making the waterway available as far in as the University Concourse for yachts for hire. A draw-bridge will cost you $65,000.00.

Mr. Gibson:
Excuse me just a minute. Will you repeat that last, about the water business there?

A. Making it available for the use of boats. All of the bridges are fixed bridges now through which no boat of any size can come through. The present bridges over the Coral Gables waterway were timber construction structures, untreated pine timber structures. There are a great many of them in a very sad state of repair. There is nine of them should be replaced. I would recommend they be replaced with plate-girder bridges, at $12,000. each; that's $108,000.00. Improving the waterway at its entrance, which is dredging the entrance channel so they can get in at all—it is now full; it is filled up since they first dredged it; and my estimate of dredging that so the boats can get in, is $25,000.00. The most serious thing in Coral Gables is their lack of sanitary sewer facilities, and I have held my breath every time we have had rain during the summer, with the high water table, with that business district built up such as it is in Coral Gables, and

it is bound to happen, and I don't see why it didn't happen last summer. It is bound to happen soon, and they will have to put in sanitary sewers to take care of the sanitary conditions in the downtown district; it makes no difference whether they like it or not, they are going to have to do it, because those sewers are going to back up and run the wrong way. As you know, there is no sanitary sewers of any nature whatsoever in the City of Coral Gables. The City is being served from a sanitary standpoint entirely by septic tanks. In the downtown district where all of the buildings close or cover the entire surface, there is a whole lot of those septic tank fields underneath the buildings. Now, if they ever back up, and you have to tear up those septic tank fields, you are going to have one glorious time in fixing it, and there is no way to fix it except tearing up the building, or the floor. We have not enough fall in this country to drain by gravity into Biscayne Bay, and I think you will find very shortly the State Board of Health will insist that no more raw sewage be dumped in the bay, anyhow, if we had the elevation; and it is only anywhere from ten to fourteen feet is the elevation of Coral Gables, and even with the larger type sewers you have to have at least a 3% drop to get to the bay, and we would run out before we got that far, or a third of the way to the bay, for that matter, and so the only thing we can do is run a pumping station and run the raw sewage through a pumping plant, and passing through the filter tanks into the Coral Gables waterway, and then it is pure water when it comes through, and it has removed the sludge. Now, the first unit would be only in the downtown district, and I will outline that district as being about two blocks south of the Antilla Hotel; I forget the name of that street; and extending to a point about three blocks south of Coral Way, and bounded on the east by Douglas Road and the west by LeJeune, which is the street just in front of the City Hall, in that area there, and a sewage disposal plant west of Red Road, or

towards the Canal, anyway, we will say, so you can get gravity drainage from your sewage disposal plant, through the filter pits, and into the canal at any point. The first cost of any such unit would cost you about $460,000.00. To complete the entire system north of Bird Road only, I have no direct figures, but it would cost you somewheres between a Million and a Million and a Half Dollars, of which the $460,000. is the first unit. But I have talked, and "cried Wolf" to the Commission even when I was on it, about this first unit of the sanitary sewage system, and they might just as well to make up their minds they have been skating on thin ice a long time, and sometime in the very near future they are going to spend approximately Half a Million Dollars to provide sewers for the down-town district of Coral Gables. I think I have covered, generally, the conditions in Coral Gables as I know them, both as commissioner and a practicing engineer in Dade County for about twenty-five years. I think that is the needs, and some of them not only needs, but absolute necessities from a health standpoint of the City of Coral Gables.

Q. Are those needs, needs that will affect in any way the future development and growth of the town?

A. I might answer they will, because the streets, the longer they go the worse they are going to be, and if you don't repair them now it's going to cost you twice as much in ten years from now to repair them. The sewage system I have tried to explain to you is not a bugaboo, but is something that's going to happen; that's all; it's bound to happen.

Q. How much of this work that you have testified about, outside of the sewage system which you have just mentioned, is immediately necessary, or can it be spread over a period of years?

A. There is $480,000.00, about, of the streets and parkways and so forth, that I should say if I was to guess at it, at least $250,000.00 of it should be spent in the next two

years, and the rest of it spread over a period not to exceed six or seven years, because if you wait longer than that it is going to double your cost, and these figures then are all wrong, and instead of coming here and repaving, or resealing at 10 cents, I would have to repave at fifty cents, because you have cut holes all in the road.

Mr. Adams:

That's all. We tender him for cross examination at the pleasure of the defense counsel.

The Master:

You will be called on to return for cross examination at some future date, Mr. Garris; you will be notified as to the time.

(Witness excused.)

Mr. Adams:

We offer in evidence a sworn certificate of J. N. Lummus, Jr., County Tax Assessor of Dade County, relating to the total valuation on the county tax roll for the year 1939 of all property in the City of Coral Gables, the percentage of the full value upon which that property is assessed, and the county millage against that property. I offer that in evidence, and will produce Mr. Lummus for cross examination at the request of the other counsel. I have not had time to have copies made of that, so if you will look at it and give it back, I will have some for you in the morning.

Mr. Gibson:

We do not object to it subject to cross examination and motion to strike.

The Master:

It will be admitted, subject to cross examination.

519 G. N. SHAW was recalled as a witness on behalf of the Petitioner, and being still under oath, further testified as follows:

Direct Examination (Resumed)

By Mr. Adams:

Q. Now, Mr. Shaw, when we adjourned at noon, I believe you had been explaining a graphic representation by the chart of the relative tax burdens in Coral Gables, Miami Springs, Miami Shores, Surfside, South Miami, Miami and Miami Beach, referred to in Petitioner's Exhibit 35. Have you made another chart from the same source of information showing the relation of the adjusted millage of these several towns?

A. I have, Mr. Adams.

Mr. Adams:

We offer this as Exhibit 37.

Q. Will you please explain the chart and the sourt of the data reduced to this form?

A. The source is the same as I described for Exhibit 35. The chart shows, as a line graph, "1", the 22 mill tax rate now being levied by the City of Coral Gables, and as a projection into the future; "2", the fixed minimum tax rates of the refunding plan in accordance with the section of Ordinance 269 establishing those tax rates; "3", the level of the City of Miami millage adjusted to full value; "4", of the City of South Miami, again adjusted to the full value; and "5", "6" and "7", the Cities of Miami Shores, and Miami Springs in combination on Line "5", and Miami Beach and Surfside on Lines "6" and "7", and in all cases the millages have been adjusted to the full value of the property. In connection with the graph, I would like to say that the Dade County millage is 69.375 on

all of the developed portion of the City of Coral Gables as shown in Exhibit 36. This represents a millage on full value of 17.344, making an over-all burden of taxes in the City of Coral Gables of 39.344. We have not investigated the over-all burdens in these other areas, but are informed that District 2, which includes School District—

Mr. Gibson:
I object to any dissertation on what you are informed about; it is hearsay, and if you don't know it, you can't testify to it.

The Master:
I think that objection is well-taken.

(The Witness):
A. I think so, too, Your Honor.

Mr. Adams:
That's O. K.

Mr. Warren:
Are you through with your explanation of that, Mr. Shaw?
A. Yes, sir.

Mr. Warren:
We object to that on the same grounds as we objected to Exhibit 35; and further, that the adjusted rate of 17.344 for the county millage is shown by Exhibit 36 and Exhibit 14, not to be a true 25% assessment. The estimated assessed value of Coral Gables for the 1940-41 year was $25,052,331.00. The assessed value of the county—the county assessed value of that same property is $5,252,-150.00. So, the adjustment is not correct. In other words, if it were 25%, then it would be 21 Million Dollars in the County assessed value

The Master:
The objection is overruled.

(Instrument marked in evidence as Petitioner's Exhibit No. 37.)

Q. Mr. Shaw, have you made any study and examination of the building permits of the City of Coral Gables as shown in Petitioner's Exhibit 15, in relation to or covering the period of 1936 to 1940, in relation to building permits as shown on the official records of Miami Shores, Miami Springs and Surfside?
A. I have, Mr. Adams.
Q. Have you reduced that study to a chart form?
A. I have.

Mr. Adams:
We want to offer this chart in evidence, and ask you to explain the chart, and the source of your studies.

Q. Will you please explain the source of information in the preparation of this graph?
A. The information was gathered by me from the 1940 census, and in the case of Coral Gables, from the original records of the building inspector's office; in the case of Miami Shores, Miami Springs and Surfside, the information was secured by me from Mr. J. A. Michael, the Village Manager of Miami Shores—I beg your pardon—from C. Lawton McCall, Village Manager of Miami Shores, J. A. Michael, the Town Clerk of Miami Springs, and Mr. Roberts, the Town Clerk of Surfside. The graph depicts—

The Master:
Just a minute, Mr. Shaw. In what form was that information furnished to you.

A. Verbally, sir, by these officials.

Mr. Gibson:
I object, without going any further, Your Honor; the same objection; it is based on hearsay.

The Master:
I think that objection is well taken.

Mr. Adams:
We would like to have the exhibit identified, for future testimony by these officials, as Exhibit No. 38.

(Instrument marked Petitioner's Exhibit No. 38 for Identification.)

Q. Now, Mr. Shaw, have you made a chart from a similar source covering only the year 1940, and showing the comparison of the building permits in these same towns for that year alone?
A. I have, sir.

Mr. Adams:
We offer for identification as Exhibit 39 a similar chart, covering the one year, 1940.

Mr. Warren:
Is that information procured in the same way?
A. In the same way.

Mr. Adams:
In the same way; and we are bringing the officials here to give supporting data, and giving you an opportunity to study this along with the rest of the data against another session. I don't know whether I can get them all in here tomorrow or not.

(Instrument marked as Petitioner's Exhibit No. 39 for Identification.)

Mr. Adams:

If the Master please, I think I am through with Mr. Shaw on direct, but I am not absolutely sure, and our next witness would be Dr. Reed, an expert, who will want to see the record of the testimony today which he has not heard, and we want him to have the benefit of those facts and to know what's there before we put him on. We would furthermore like an opportunity to secure the officials from these four towns whose testimony we hope and believe will substantiate the charts that Mr. Shaw has drawn, and ask for an adjournment at this time until ten o'clock in the morning.

Mr. Gibson:

I object to that, Your Honor, and—

Mr. Clark:

Your Honor, can I request what is the object of excluding the witnesses if they are going to read the testimony of the other witnesses?

The Master:

The master has no control over that. The question is whether we shall adjourn, and what happens in the meantime I can't control.

Mr. Gibson:

Well, I give you notice right now, if the witness reads the record we will object to his testimony. If he reads it directly or indirectly, or is advised of it in any way, or knows anything that's going on here, or if it is conveyed to him by counsel or anybody, we will object to it.

Mr. Adams:

He is an expert.

Mr. Gibson:

He is not an expert on what's doing today here; that's just exactly why we had him excluded.

(Thereupon, there was informal discussion had been between counsel, off the record, concerning the above matter, following which the Master adjourned the hearing until the hour of 10:00 o'clock A. M., January 23rd, 1941.)

Thereupon, at 10:00 o'clock A. M. on January 23, 1941, the hearing was resumed, the appearances of counsel at the hearing being the same as those noted for the preceding day. Thereupon, the following proceedings were had:

The Master:

All right, proceed, Mr. Adams.

Mr. Adams:

We found one item that we know we want Mr. Shaw to testify about.

526 G. N. SHAW was recalled as a witness on behalf of the Petitioner, and being still under oath, further testified as follows:

Direct Examination (Resumed)

By Mr. Adams:

Q. Mr. Shaw, as a part of your duties as Finance Director of the City, do you prepare from the records of the City, and file as an official document, an operations report at the end of each fiscal year?

A. I do.

Q. Did you prepare one for the fiscal year 1939-40?

A. I did.

Q. Was that prepared prior to or after the audit for that fiscal year?

A. Prior to the audit. We attempt to make that report in July, and the audit, of course, cannot be completed until a later date.

Q. (Handing document to witness) Is that the report, or a copy of the report which you filed covering the fiscal year 1939-40?

A. That is the report, Mr. Adams.

Q. Have you verified or compared this report with the official audit report for that fiscal year?

A. I have, Mr. Adams.

Q. Are there any discrepancies?

A. There are two or three minor adjustment entries. I have not made that comparison recently. I seem to recall an item of some $12.50 and another item of $3.00, and some minor adjustments made after the detailed audit had been effected. In substance, this report is in agreement with the audit.

Mr. Adams:

We offer this report in evidence as Petitioner's Exhibit No. 40, and maybe I should state, we offer Exhibit 40 consisting of seven sheets.

(Copies of the above instrument were handed counsel for creditors for the purpose of examination.)

The Master:

You gentlemen could save your objection by a motion to strike later, if you see fit.

Mr. Warren:

We would like to do that, if Your Honor please.

The Master:

These gentlemen are willing, in order to save time, to waive their objections now with the understanding they may be raised by a motion to strike.

Mr. Adams:

That's satisfactory to us.

The Master:

The exhibit will be admitted, subject to a motion to strike.

(Instrument marked in evidence as Petitioner's Exhibit No. 30, subject to reservation of objections and future motion to strike.)

Mr. Adams:

The Petitioner is through with Mr. Shaw for the time being, but wants to reserve the right to go over the record so far, and place him on the stand in direct at a later time to fill in any possible gaps in the testimony that he has offered.

The Master:

It is so ordered.

Mr. Redfearn:

In other words, you are tendering him for cross examination, which they are delaying until another time?

Mr. Adams:

Yes.

(Witness excused.)

Mr. Adams:

Our next witness will be Dr. Reed. To save time, and for the convenience of counsel, Dr. Reed prepared a statement of his qualifications as an expert, which you might read now. (Thereupon handing to opposing counsel copies of said statement.)

528 THOMAS H. REED was called as a witness on behalf of the Petitioner, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Adams:

Q. Doctor, will you please state your full name and place of residence?

A. My name is Thomas H. Reed, Thomas Harrison Reed, and my residence is 242 East 19th Street, New York City.

Q. Will you please state into the record the degrees you hold and the positions you have held, and your education, and experience in matters of municipal finance and administration?

A. Well, I have prepared a written statement which has been submitted. Do you want me to read this?

Q. No. You can say "I have prepared a written statement".

A. I have prepared a written statement which I submit for the record.

Mr. Adams:

Is there any objection?

The Master:

There can't be any objection to the statement; there may be an objection to its effectiveness. Let the Reporter copy that into the record.

529 STATEMENT OF EXPERT QUALIFICATION OF THOMAS H. REED.

"In the United States District Court in and for the Southern District of Florida, Miami Division.

In the Matter of
The City of Coral Gables, Florida.
No. 1867-M In Bankruptcy.

Thomas H. Reed holds the degrees of A. B. and L. L. B. from Harvard and L. L. D. from the University of Brussells, Belgium. From 1909 to 1921, he was, successively, Instructor, Assistant Professor, and Professor, of Municipal Government at the University of California. In 1911, he was on leave from the University as Secretary to the Governor of California. In 1916, he was employed as Consultant in preparing a plan for the consolidation of all the East Bay Municipalities. From 1916 to 1918, he was also on leave to act as City Manager of San Jose, the charter of which City he had previously drafted. In 1922, he became Professor of Political Science at the University of Michigan, where he remained, except for periodic leaves of absence, until 1934. In 1923, he participated in the survey of Cincinnati and Hamilton County, Ohio, which resulted in revolutionizing the government of that City. In 1926, he investigated the governments of the Metropolitan areas of London, Paris, Berlin and Brussells. In 1928-29, he was Director of Research for the Pennsylvania Commission to study Municipal Consolidation in Counties of the Second Class (i. e. Pittsburgh). In 1929-30, he occupied a similar position with the City and County Metropolitan Development Committee in St. Louis. In 1930, he was also visiting lecturer on Municipal Government at Harvard. In 1932, he directed a survey of Oakland County (Pontiac) Michigan. From 1933 to 1938,

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he was Director of the Consultant Service of the National Municipal League, in which capacity he made financial and administrative surveys of more than thirty municipalities, including Coral Gables, St. Petersburg, and Winter Park, Florida; Savannah, Atlanta, and Fulton County, Georgia; Florence, Alabama; Nassau County, New York; Asbury Park, New Jersey; and Yonkers, New York. In 1938, he was technical advisor to the City of Richmond, Virginia, in the preparation of its case for annexation of a portion of Henrico County.

He is Chairman of the Committee on Reorganization and Consolidation of Local Government of the Municipal Section of the American Bar Association, and Chairman of the Committee on Finance and Taxation of the City Club of New York. He is the author of "Municipal Government in the United States" (Appleton-Century Company), "Twenty Years of Government in Essex County" (New Jersey), and of many other books on government. He is a frequent contributor to periodicals in the local government field, and is frequently employed in drafting charters and legislation."

Mr. Adams:

Now, it would be appropriate, I imagine, at this time to submit him for cross examination as to his qualifications.

Mr. Clarke:

Can't that be handled when we cross examine him later?

Mr. Adams:

Either way.

The Master:

Just as you prefer.

Mr. Clarke:
Well, I do.

The Master:
Well, let counsel agree on their course.

Mr. Lea:
Well, we will just reserve the cross examination on his qualifications until all of it comes in, if Your Honor please.

The Master:
It is so ordered.

Q. Dr. Reed, have you ever made a study of the municipal financing and administration of the Petitioner, the City of Coral Gables?

A. I have.

Q. When was that study made?

A. It was made in the summer of 1934.

Q. Did you have anyone, or any experts, or any individuals assisting you in that study?

A. Yes; we had Mr. John C. Donehoo, the then City Assessor of St. Petersburg, who made a spot appraisal of improved real estate in Coral Gables, and a general survey of the situation with regard to vacant property at that time, and the portion of our report which relates to assessed valuations was based upon Mr. Donehoo's findings.

Q. Did you make a written report of your findings and recommendations?

A. I did.

Q. I hand you Exhibit marked for identification No. 18, and ask you if that is the report.

A. Yes, that is the report which we submitted, and which was published by the City of Coral Gables for rather general distribution.

Q. Is this Exhibit 18 an accurate printing of your original report made to the City?

A. Yes.

Q. Now, Doctor, have you studied the details of the 1937 refunding plan being offered to the Court in this case as a plan of composition as set forth in City Ordinances Numbers 269 and 289?

A. I have, yes.

Q. Exhibits in this case 6 and 9?

A. Yes.

Q. Have you made any other study of the operations and finances of the City of Coral Gables recently?

A. I have, in connection with the preparation for testimony in this case made some study of the financial records of the City of Coral Gables, and of the exhibits prepared for presentation in this case.

Q. Have you examined the following exhibits filed in evidence in this cause, Exhibit No. 5, being a statement of debts as of January 1, 1937, as shown in Ordinance No. 269, with an adjustment of the same to the actual outstanding indebtedness?

A. I have examined all of those that relate to the financial evidence of the City. I have not examined those which relate to its boundaries and the ouster suits in litigation, and that sort of thing.

Q. Have you examined the charts and graphs prepared by Mr. Shaw prior to—examined them prior to this hearing and which charts and graphs were prepared prior to this hearing, reducing to picture form the data included in the financial statements and studies?

A. Yes, I have.

Mr. Gibson:

Are you sure those are in evidence?

A. I'm sure I have examined the ones in evidence. I have seen all of them.

Mr. Gibson:

You have seen all of them in evidence?

A. Yes, sir.

Mr. Gibson:
That includes the exhibits placed in yesterday?
A. Yes.

Mr. Gibson:
Including the exhibits put in yesterday?
A. I saw them before the hearing.

Mr. Gibson:
Did you see them after the hearing took place?
A. No, I didn't see them after the hearing took place.

Mr. Gibson:
Have you seen any of the record of yesterday's proceedings?
A. No, sir.

Mr. Gibson:
Have you discussed any of yesterday's proceedings with counsel for the Petitioner?
A. Yes, sir, I have.

Mr. Gibson:
You have discussed yesterday's proceedings with counsel?
A. Yes, which I have a perfect right to do.

Mr. Gibson:
I move to strike that latter, that it is a conclusion of the witness as to the law of the situation.

The Master:
The motion is denied.

Mr. Adams:
Now, off the record we will proceed to have the witness examine the original exhibits in the file, and note

in the record the clarification of the point which has been generally stated, if counsel requests it.

Mr. Gibson:
What was that?

Mr. Adams:
That we have the witness proceed to examine the original exhibits in the file of the case and identify those as the ones he studied, as counsel requested. We have a general statement now that he has seen them all.

Mr. Gibson:
My question was whether he had seen some that weren't in evidence.

(The Witness):
A. I may have seen some that are not in evidence; I am not just positive what ones have been produced in evidence.

Mr. Gibson:
I prefer he base his testimony on those that are in evidence.

(Thereupon, the exhibits heretofore filed in the cause by the Petitioner were one by one handed to the Witness by the Master for the purpose of determining whether or not they had been examined by him, after which the following proceedings were had:)

The Master:
Well, gentlemen, supposing we shorten the record here, if this is satisfactory. Mr. Gibson, suppose we shorten the record here if this is satisfactory, and instead of the colloquy that has been engaged in between the Witness and the Master, just let the answer of the Witness be: "I have

examined the following exhibits introduced in this case", and list those which he says he has examined. Is there any objection to that?

Mr. Gibson:
No, sir.

The Master:
"And as to the other exhibits introduced in evidence, I have not examined". Now, you can put your formal question there, if you want to, Mr. Gibson.

Mr. Gibson:
Which of these exhibits, Mr. Reed, did you examine subsequent to yesterday morning?

Mr. Redfearn:
Just a minute. We object to the question on the ground it is irrelevant and immaterial, and we are now prepared to argue the law on it if Your Honor wants to hear it. We contend—

Mr. Gibson:
The witness is under the rule, and we have a right to know which ones he examined after he was placed under the rule.

Mr. Redfearn:
Just a minute. We contend this witness, an expert witness, had a right to remain in and not be put under the rule, and he has a right to read the testimony or examine any exhibit. The Courts are clear on that question, and we are prepared to argue the law if you are ready to hear it. And he also testified that he examined these before the hearing.

Mr. Gibson:
I wonder if Mr. Redfearn isn't being a little precipitate in that we haven't objected to anything on that basis. We are simply inquiring which ones he examined after he was put under the rule.

(The Witness):
Q. Perhaps I can settle that by answering the question.

Mr. Gibson:
Let's wait just a minute.

The Master:
Well, if the Witness wants to answer the question, let him answer.

A. I have not examined any of these exhibits for the first time since yesterday. I have examined practically all of them since yesterday, but not for the first time. I saw these exhibits as they were prepared for presentation.

Mr. Gibson:
You did, then, refresh your memory since yesterday?
A. Oh, certainly.

The Master:
Have you anything further, Mr. Gibson?

Mr. Gibson:
That's all right now.

By Mr. Adams:
Q. Dr. Reed, the Master has just handed to you each of the exhibits introduced by the Petitioner in this cause during these proceedings, in the order in which they have been introduced. Please state for the record the num-

bers of those exhibits which you have in your answers to the inquiry of the Master indicated were the exhibits which you have examined prior to the date of this hearing.

A. Of the exhibits which the Master has handed to me, those which I have examined are as follows: Exhibits Numbers 5, 6, 9, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 35, 37, 38, 39 and 40, that being the last numbered exhibit.

Q. Dr. Reed, taking the financial bond debt situation of the City as of January 1, 1937, shown in Exhibit 5, please state whether or not some adjustment, composition and settlement of this bonded indebtedness was a necessity or not.

A. In my opinion it was a necessity for the reason that the total indebtedness amounted to in excess of $11,000,000 at the time when the full value, assessed valuation of the City was only $22,000,000; that's 50%, or practically 50% of the assessed valuation; and at the time when the City's tax levy on a 19 mill rate amounted to only $382,000, and its actual current tax collections to $252,000. The installments of principal and interest coming due upon such a debt, and the statement of the sums in default, which appears in one of these other exhibits, indicates very clearly that some kind of composition was absolutely necessary.

Mr. Warren:

Will you specify which other exhibit, when you say another exhibit?

A. The statement of defaults is—

Mr. Warren:

Just refer to the number so we will have it in the record.

Mr. Adams:
I think it is 17.
A. Is it 17? Have you got it there?

Mr. Adams:
Yes; (handing exhibit to the witness.)

The Master:
Here is the original exhibit.
A. (After examining exhibit) Yes; Exhibit 17.

The Master:
Is that the only other exhibit that you refer to?
A. That's the only other exhibit I refer to. I referred to 5, 14 and 17 in my answer to that question.
Q. Have you finished your answer to that question?
A. Yes.
Q. Dr. Reed, please state your opinion upon the fairness of the plan of composition as outlined in Exhibits 6, being Ordinance 269, and 9, being Ordinance No. 289.

Mr. Warren:
Just a minute. I want to object to that, in that those ordinances speak as of January 1, 1937, and now as of the date of the filing of the petition, or as of this date.

Mr. Lea:
I would just like to object on the ground that that is a question of law to be determined by the Master, a mixed matter of law and fact, and I don't believe it would be a question on which an expert, even, would be competent to testify, inasmuch as that is what the Master has to find from the law in the case.

Mr. Haycock:
We might say in reply to that, Your Honor, that the Master is not an expert in financial matters, and that he

can only be assisted by witnesses who are competent to testify as to such matters.

Mr. Gibson:

Witnesses I believe, Your Honor, are not called upon to give the Master a conclusion. They can testify to the facts as they find them, but I don't think the witness is called upon to tell the Master his conclusion as to what the Master is supposed to find from the facts in the testimony.

The Master:

The Master has not ruled on Dr. Reed as an expert because he hasn't been cross examined on that point, but assuming that he will qualify as an expert, he is certainly entitled to express his opinion as to this plan, and the objections are overruled.

Mr. Warren:

The objection I made, if the Court please, is that it speaks as of January, 1937, and not as of the present time.

The Master:

The objection is overruled.

A. In my opinion, the plan of January 1, 1937, was a fair plan of composition. There are in all such situations, assuming that a necessity for composition exists, to which I have already testified, there are in all such situations contending or rival claims and interests which have to be reconciled. There are creditors who have different points of view, naturally. There are some creditors who desire an asset on which they can realize quickly. In other words, their interest is in liquidity. There are other creditors whose interest is in securing as large an ultimate return upon their original investment as possible. Those

two interests have to be reconciled. It is also true that the interests of the City and of both classes of creditors have to be reconciled, and if, of course, it were possible to bring about a complete liquidation of the municipality, sell its assets on the auction block as you might in the case of an individual or an ordinary corporate creditor, the needs of the first class of creditors would be probably satisfied without any consideration of the interests of the municipality, but it isn't possible to liquidate a municipality; it isn't either economically or socially, or perhaps you will permit me to say legally possible to liquidate a municipality. Municipalities, being created by the State for the purpose of serving certain local interests, are obliged to continue whether they want to continue or not. Therefore, since the municipality has to continue, and the adjustment of its debts with its creditors is something upon which it and the creditors do have a common interest, especially that class of creditors whose interest is concerned in getting as large a possible ultimate return upon their investment. That means that those creditors are interested in the continued prosperity and well-being and growth of the community. In all these situations in which I have had experience, and I have had knowledge of quite a good number of them, these two ideas have to be worked out; first, the immediate ability of the City to pay, and second, its ultimate ability to pay; its potential ultimate ability. On the first of these points I think this plan was a fair plan. It took into account the immediate ability of the City of Coral Gables to pay. Now, naturally it is impossible to set up any absolute, automatic standards by which one judges or can judge ability to pay. It is to a large extent a matter of opinion and of conflicting opinion. It has to be arrived at by a process of argument and compromise. Now, that is the way in which this particular compromise was arrived at. It is rather significant that from the very beginning the bondholders protective com-

mittee in Coral Gables—for Coral Gables, did not attempt to secure full payment of principal. They adopted from the very beginning the idea that approximately $4,000,000 of the debt should be treated as a primary obligation, to which the full faith and credit of the City was pledged, and that the remainder of the debt should be cared for by some process which would enable the creditors to share in the growth of the City. That was done in a variety of ways. It was proposed to pledge the tax liens, and so on, which were ultimately declared invalid, and spoiled that plan. It was also suggested that the tax properties be put in the hands of a corporation, in escrow, for the benefit of the creditors, and administered for them, and that, of course, fell for the same reason. And ultimately the plan which was adopted as of January 1, 1937, which I will speak of in a moment, was put in. Then, at the beginning, the creditors insisted upon 6% interest on the $4,000,000 of primary obligations. That was the situation at the time I came here to make my study in 1934, and that study was largely directed at the question as to whether or not the City of Coral Gables could carry an interest charge of $240,000 per annum. My conclusions, as stated in my report, were that it could not carry an interest charge at that time of $240,000. The plan was then gradually modified over a period of time until you get to the plan of January 1, 1937. It took altogether approximately six years to work out a plan, but those six years were not lost, because during that time we had the process of settling down of values in Coral Gables, the adoption of a modern, scientific system of real property assessment, and the inauguration of a new basis of taxation, and a new kind of tax rate which involves now nearly twice as much burden upon improved property as was the case at the time that I made my study in 1934. That process of settling down of values and correcting assessed valuations and getting the people of Coral Gables reconciled to a

more severe type of taxation was really a condition precedent to the success of any plan of composition which might have been suggested, so that the six year period was by no means lost. Now, the plan of January 1, 1937, was therefore the result of compromise and agreement between the City and the representatives of the majority, a very large majority of its creditors, and the result was that the plan which appears in Ordinance 289 under which a debt—a primary debt of approximately $4,200,000 is set up with the sliding scale of interest increasing gradually over a period of years until it reaches ultimately 5%, and that modified scale of maturities which postpones the first maturities until quite well along in the plan, and a provision for a rate to be levied sufficient to take care of these bonds. That is, these bonds are full faith and credit bonds. The question of a fixed rate of levy for bonds doesn't really have anything to do with these primary obligations. If the obligatory levy didn't provide the necessary sums for them, they would have to be provided in any event by an increase of levy above that point. Now, for the remainder of the debt, the remainder of the $11,000,000 above the $4,200,000, the plan provided a system of obligatory levies on a sliding scale, 6, 7, 7½, and 8—

Mr. Clarke:

I object to his statement, and move to strike it, on the ground it is not in accordance with the testimony of the levies that have been made.

The Master:

It isn't the duty of the Master to make the witnesses' testimonies agree. The motion is overruled.

A. (Continuing) I am basing my testimony upon the hypothesis of the exhibits, and upon the basis of those exhibits and upon the basis of the plan itself; what is called for is 6, 7, 7½ and 8 mill levies for the purpose of taking care of the January 1, 1937, refunding. Of the pro-

ceeds, a sufficient amount to care for principal and interest on the $4,200,000 of primary obligations is first deducted, and then the remainder is applied to the bonds or to the tax participation certificates which were given for the balance of the debt.

Mr. Berry:

If the Court please, I am taking the noon plane, and I am going to retire and leave my case in the hands of my associates. I wish to express my appreciation of Your Honor's indulgences, and of our friendly enemies over here.

The Master:

I hope you have a nice flight and a safe landing.

(Whereupon, Mr. Berry retired from the hearing.)

A. (Continuing) I think that the features of the plan which provide for the immediate requirements of the City or the immediate requirements of the plan of refunding are fair to the City and fair to the creditors. That is, I think they represent a reasonable compromise between their respective interests. I base that on, in part, the findings I made in 1934. At that time we found that the assessed valuation of unimproved property was very much in excess of its actual value. When Mr. Donehoo made the survey upon which that portion of our report was based, he found that the value of the unimproved property, the vacant lots, would be about $3,000,000. He subsequently, a year or so later, on a complete analysis which we recommended because we didn't believe that the partial survey that was made was sufficient to actually determine the value,—he found that the value of the unimproved lots was about $7,000,000. It had been, however, assessed —they had been assessed formerly, however, for about

$18,000,000. We found that the value of the improved property—

Mr. Gibson:
Just a minute, please.

A. Yes.

Mr. Gibson:
I am just wondering about the propriety of the witness testifying about what somebody else found, Your Honor.

Mr. Redfearn:
He said "we found".

Mr. Gibson:
I think he said Mr. Donehoo found, and Mr. Donehoo revised.

A. May I explain that, that Mr. Donehoo was employed by me, by the Consultants Service of the National Municipal League, of which I was the director—he was employed to make this study, and Mr. Donehoo's study and my study was a combined piece of work. I merely refer to it as Mr. Donehoo's findings as descriptive, and not as endeavoring to pass the buck to Mr. Donehoo. You can call it my finding, if you want to.

Mr. Gibson:
Will you excuse me just a minute, to keep from confusing the record? I want to confer with counsel on this. (Thereupon, consulting associate counsel for objecting creditors.) All right; I withdraw the objection.

The Master:
The Master might as well say here that if the witness is testifying from what Mr. Donehoo told him, it certainly

would not be admissible, but if it is the joint work of the two, I think it is.

A. Well, in the making a municipal survey of this character, it is frequently necessary to employ several persons, and Mr. Donehoo submitted me a written report which I went over with him at great lengths, and we arrived at this report, which embodies the conclusions of both.

Mr. Warren:

That's in 1934?

A. That's in the 1934 report. We found that this very high value that had been placed on unimproved property had a great deal to do with the very high rate of tax delinquencies which then existed, and we suggested—

Mr. Gibson:

Your Honor, excuse me a minute. I think we would like to have the witness admonished to refer simply to the work that he did, or the work he did in conjunction with someone else, but not with regards to work that Mr. Donehoo did and then submitted to him later.

The Master:

I think I have sufficiently admonished the witness on that point.

A. Our report of 1934, Exhibit 18, found the then existing assessed valuation to be $14,530,000.00 on improved property, and $19,123,000.00 on vacant property. We recommended that justified values would be as follows—that is, true values; $14,530,000.00 on the improved property and $3,356,000.00 on vacant property. On the basis of that recommendation, that finding, we recommended—we did not recommend—we found that at the same tax

rate which then prevailed, which was a 30 mill tax rate on half of these assessed valuations I have just been speaking about—

Mr. Gibson:

Doctor, here's what I mean by the use of the word "we". Who appraised the values of those lands? Did you have anything to do with that?

A. I did not appraise the values of the land, no.

Mr. Gibson:

Then the aggregate amount of the value of the land, you didn't have anything at all to do with that? Mr. Donehoo prepared that?

A. Mr. Donehoo prepared that and submitted it to me.

Mr. Gibson:

Then the use of the word "we" in the report doesn't refer properly to the setting of the value of the lands and the assessed values, does it? In other words, you base your opinion on the values as established by Mr. Donehoo?

A. Yes, sir.

Mr. Adams:

In a joint study.

A. In a joint study which we both made.

Mr. Gibson:

But your study started where Mr. Donehoo stopped, though?

A. Mr. Donehoo was employed by me to do that portion of the work, on the basis of which a joint report was prepared by me.

Mr. Gibson:

But it was Mr. Donehoo's judgment that set the values?

A. Yes, sir, it was Mr. Donehoo's judgment that set the values. It was my judgment, however, that made the—or that worked the plan, or worked out an estimate of the return, upon a true value basis as represented in this report.

The Master:

Let the Master say here that the testimony of the witness based on Mr. Donehoo's work is appropriate and admissible, but on the assumption that the proof will be made as to what Mr. Donehoo's findings were. I do not think that a sufficient foundation has been yet laid for assuming that Mr. Donehoo's findings were correct.

(At this time, Mr. Augustus T. Ashton, one of the objecting creditors, appeared at the hearing.)

(The Witness):

A. I started to offer an explanation of the then existing tax rate.

The Master:

Proceed.

A. (Continuing) Which was 30 mills on one-half of these assessed valuations which I just quoted, the existing city valuation, which was a total of $33,000,000.00.

Mr. Gibson:

Do I understand, then, that before you started to work to make your survey, the City had valued this property at $33,000,000.00?

A. Had valued it at $33,000,000.00; that's correct; and it assessed upon one-half, or approximately one-half that value, and levied upon it a 30 mill rate. We therefore concluded—I therefore concluded that a 30 mill rate on a

50% valuation was approximately the same as a 15 mill rate upon a full valuation.

Mr. Gibson:

You are talking about what year, now?

A. 1934. So I figured the taxes that could be collected at a 15 mill rate—that could be levied on a 15 mill rate on improved property, and they were collecting practically full from improved property, either in the form of current or delinquent taxes, at that time. Property was paying. It would amount to $218,572.00; that current taxes on vacant property, in my estimate, would on the new basis of a $3,300,000. valuation, produce $17,500.00; that delinquent taxes on vacant property would produce $9,-200.00; and that city licenses would produce $11,000.00. That is a total revenue of $256,272.00. At the same time we recommended—or, we suggested—I would prefer to say that we suggested a $210,000.00 operating budget, which represented in reality the 1933-34 budget; the 1933-34 actual expenditure less $20,000.00 of reduction—really, reduction in operation and the omission of certain non-recurring items; a $210,000.00 operating budget, we recommended, which would have left $46,000.00 for debt service on that basis. If on the basis of the actual valuation of property, unimproved property which was finally set up by the City in 1936 on Mr. Donehoo's basis—on the basis of Mr. Donehoo's further work with the City, a value of $7,000,000.—a little more than $7,000,000.00. My estimates of current tax collections from vacant property and delinquent tax collections from vacant property would have had to have been approximately doubled, and that would have made the balance for debt service about $72,-000.00 instead of $46,000.00. We concluded from these figures as we originally presented them that it was impossible to pay $240,000.00 of interest annually, and that conclusion would not have been materially altered had we known what the vacant property ultimately would be

valued at by the City. We did suggest an increase in rate of taxation, a slight increase in rate of taxation; we warned against any very considerable increase in the rate of taxation because of the competitive position of Coral Gables in the Miami area, and because we felt that the rate of overlapping taxation at that time was already pretty high, that is, when City and County and School taxing was all considered together, the people of Coral Gables were even then paying a pretty fairly high tax, but we felt that there could be a small increase in the rate. Now, that was the situation as we found it in 1934. Subsequent events have not changed that situation materially, except to justify, in my opinion, the increased rate which property now pays. The property now pays 22 mills instead of the 15, on true value, which it was then paying. Since the improved property now pays the 22 mills on full value, improved property is actually taxed nearly 50% more than it was when we made our study in 1934. I think that that represents about as far as the City could go in the way of taxation, and a tax of that amount is necessary in order to provide for the service of the refunding plan, other incidental debt payments to judgment holders, and so on, and to provide a reasonable amount for the operation of the City. The total tax levies which you find on Exhibit 14, which in 1933-34, on which we based our opinion, amounted to $498,000.00 on which they collected 44%, or $222,000.00, have been gradually increased to $456,000.00, and on which they collected, last year, 79% or $356,000.00.

By Mr. Adams:

Q. Pardon me, Doctor, you are looking at the wrong line, there.

A. I'm looking at the year 1939-40, the last year upon which any collections could be based; $446,000.00, on which they collected $356,000.00, or 79%. Now, that's a

great improvement in tax collection. It is a considerable improvement in total revenue. It is no more, however, than is necessary to care for the service of the refunding plan and to provide a normal and reasonable—normally reasonably for operating costs. So I think that as far as the immediate ability to pay was concerned, the plan is a reasonable and fair plan to both sides. It involves concessions on both sides. The City has had to agree to a pretty high rate of taxation, and a very great increase on improved property. It did it to some disadvantage with regard to taxation in the Miami area and other communities in the Miami area, and it has obligated itself to pay 6, 7, 7½ and 8% on a sliding scale for debt service.

Mr. Gibson:

You don't mean percent; you mean mills.

A. Yes; mills; until 1977; which is a severe limitation upon the ability of the City to borrow for other purposes, and a heavy obligation in the long run. So I think that as far as the immediate plan—the immediate effects of the plan as to current ability to pay is concerned, it was a sound and reasonable plan. Now, mind you, I don't say there might not have been other feasible and reasonable plan. Two men sitting down together, or a city and a group of creditors sitting down together to discuss such a matter, have got to arrive at it on a basis of compromise, and it isn't a think on which there is a standard which can be definitely set up; but I see no reason whatever to criticize this plan on the ground of unfairness to the parties concerned to it, so far as the city's immediate ability to pay was concerned.

Mr. Clarke:

Maybe I misunderstood you, Dr. Reed. Did you say "was concerned?"

Mr. Adams:
Read what he said there.

(Last portion of Answer of witness, commencing with words "but I see no reason", etc., read by the Reporter.)

A. I would like to add to that, "or is concerned".

Mr. Clarke:
I just didn't understand that.

A. Yes; I will add that; both then and now.

Q. Dr. Reed, you have been discussing the fairness of this plan of composition from the viewpoint of the immediate ability of the City to pay as of the status of the debts on January 1, 1937. Will you please refer to Exhibit 12, showing a statement of the status of the debts, including those refunded, those in judgment, and those being serviced by peremptory writ—by levies required by peremptory writs, and those bonds not refunded, and state what your opinion is as to the fairness of the plan in the light of this stage of the refunding, and the immediate ability of the City to pay?

A. Well, obviously, from this statement, the refunding has been completed to an extent of about 94 or 95%. The definite percentages appear in one of the other exhibits; I think that is in this exhibit (producing copy of instrument), which I don't know the number of.

Q. I'll get it for you.—He refers to Exhibit 19.

A. Yes; Exhibit 19. There still remain, according to Exhibit 19, outstanding, approximately $750,000.00 of hold-out bonds and accrued interest, and so on, of debt, that was originally included in the January 1, 1937, statement of indebtedness. I would say that a very considerable degree of success had been obtained in securing the consent of creditors to the original plan of January 1, 1937, but

that a sufficiently large proportion of that debt remains outstanding to exist as a considerable threat to the present ability of the City to meet its obligations as they come due.

Mr. Gibson:

Dr. Reed, in your statement of the amount of Seven Hundred and some odd Thousand Dollars—

A. Yes, sir.

Mr. Gibson: (Cont'g):

Are you including therein that portion of the debt that was the subject of special agreements, the liquidation of which was a special agreement with the City of Coral Gables other than the acceptance of the refunding bonds?

A. I am including what is presented in Exhibit 19. Here's the exhibit, Exhibit No. 19, which is a statement of progress of the City of Coral Gables refunding to June 30, 1940, and changes that have been made to January 18, 1941, in terms of debt as of January 1, 1937. It shows about $750,000.00.

Mr. Gibson:

But you used the term "hold-out". Do you find any such term set forth in this exhibit?

A. I didn't. If the term "hold-out" hurts your feelings I will be glad to modify it and say "unrefunded bonds".

Mr. Clarke:

Doctor, is that the $206,000. and the $445,000.00 items that you refer to there?

A. Yes, sir.

Mr. Gibson:

Well, Doctor, do you necessarily mean "unrefunded", or that portion of the bonds which have not been exchanged?

A. What I mean is the portion of debt which existed on January 1, 1937, and was the subject of the plan as I think, then, which has not yet been brought into the plan. is that perfectly plain?

Mr. Gibson:

Into the plan of 1937?

A. Yes, sir.

Mr. Gibson:

But are you advised as to the portion of that debt which was subject to a separate plan with the City for its liquidation?

A. I am not advised as to that.

Mr. Gibson:

And your figures of $750,000.00, as set forth in Exhibit 19, do not take that into consideration?

A. No.

Mr. Gibson:

You don't know what portion of that $750,000.00 was subject to a special agreement with the City, do you?

A. No, sir, I do not. You will have to bring that out through Mr. Shaw.

Mr. Gibson:

All right. Go ahead.

Q. From the status of the City's debt from the two exhibits you have before you, Numbers 12 and 19, what is your opinion of the necessity as of June 30, 1940, for a completion of this refunding?

A. I consider that a completion of the refunding is necessary to the security—the continued successful operation of the City's refunding plans, and to a continuance of its ability to pay. There is another exhibit that shows more conclusively still, isn't there, than this? I don't know when it was submitted, because it wasn't submitted while I was in the room, but I think it is one of those I have seen and went over.

Q. I wish in answering that question you would refer to No. 30.

A. No. 30. This shows that the outstanding unrefunded obligations which were due and payable during the fiscal year 1940-41 amounted to $339,000.00, and would have occasioned a tax rate—

Q. Pardon me. (To the Master) Could he have the original? This one was corrected.

Mr. Clarke:

This one never has been admitted; it was to be rewritten.

Mr. Adams:

Yes; the correction appears where he refers to on the original; we haven't finished that yet.

A. Does the correction have anything to do with Line No. 1?

Mr. Clarke:

Yes; that's where the correction is.

Mr. Adams:

The correction would show the reduction in the amount of .24 in the millage in the amount shown on Line 1.

A. All right. From my point of view the correction would make no difference in my opinion, based on the table. I would say 330-odd Thousand Dollars to be paid during the year 1940-41, and an interest rate thereon—I

mean, a millage necessary for that purpose in excess of 15 mills, which, added to the City's millage—present millage rates, making a deduction for the fact that a levy is now being made for some of this amount, would increase the City rate to something over 35 mills, and with the overlapping taxes of the County and the School Districts added to it, would produce a gross rate on true value of about 52 mills. Now, that is in round numbers. Of course, a 52 mill rate on a full value means something approximate to 104 mills in most Florida cities, and would be 208 mills on the kind of valuations that the County uses; and I think that it would be impossible for the City to meet those obligations in the fiscal year 1940-41.

Mr. Gibson:

Do I understand you to say that in most Florida cities the property is assessed at fifty cents on the Dollar?

A. From 50 to 60, those I have had experience with.

Mr. Gibson:

What cities would you say those were?

The Master:

Just a minute. You can cross examine later.

Mr. Gibson:

Excuse me: I forget.

A. Have I finished the answer to that question?

Q. I think so.

Mr. Gibson:

Ignore my question.

A. Oh—I remember where I was. I think it would be impossible for the City—now I have got my train of thought again. It would be impossible for the City to

have met those obligations during the year 1940-41 without imposing a rate of taxation so high as to result in a reduction of the proportion of collections, a further throwback into the uncertain conditions with regard to possible taxation on real property which for a long time hindered the growth of the City of Coral Gables, and would very likely result in a default situation appearing again at this time. It is not as big a mountain to get over as the mountain that existed on January 1, 1937, but it doesn't really make a great deal of difference how high a mountain is if you can't get over it. It might be a very small hill, but if you can't climb, it is just as much of an obstacle as the Sierras or the Himalayas, or any of them.

Q. Now, Doctor, the testimony in connection with Exhibit 30 and the exhibit itself shows that the past due and current indebtedness for the fiscal year 1940-41 could not be now placed in that year's budget, nor in the tax levy for the year 1940, and would have to be combined, if paid, currently with the 1941-42 tax levy and budget. Would that increase or decrease the difficulties resulting from that situation?

A. It increases the difficulty by the amount of the additional taxes that would have to be levied in 1940-41. That's, of course, one of the great troubles with situations of this kind, where debts remain unpaid, that they pile up and accumulate and create a more difficult situation as time goes on.

Q. Now, Doctor, you have been discussing the immediate necessity for composition, and the fairness of the plan as it relates to the immediate ability of the City to pay.

A. Yes.

Q. Will you please now discuss the fairness of the plan from the viewpoint of the potential ability of the City to pay, and give your opinion of what that is?

A. May I have the official exhibits of these two? (Indicating exhibits.)

Q. He is referring to Exhibit 22, relating to growth, and Exhibit 27, relating to projection of that growth in the future.

A. Well, I have these two exhibits before me here.

Q. 22 is the growth of the town on the assumed rate of 3.5 per cent per annum, and 27 is the application of that growth and showing its effect on the assessment roll.

Mr. Gibson:

Your Honor, we object to the manner in which that question is framed. What he is attempting to do here is to ask a hypothetical question without outlining his hypothesis, so to speak. Let him ask the question of the witness based on the testimony that has been given, and ask him for his question; not just simply a blank, "what is his opinion; what is the future potentiality of the City". I think he should frame that or address that question properly in a properly framed hypothetical question. It calls for a conclusion of the witness.

The Master:

Well, if the counsel had to prepare a hypothetical question to cover all the testimony that has been introduced we would be here until sometime next year. The objection is overruled.

Mr. Gibson:

Well, we would like to have the question.

A. Am I at liberty to proceed?

The Master:

Do you want the reporter to read the question?

A. Yes. (Last question propounded read to the witness.)

The Master:

I construe that question to be to call for an opinion of the witness on those exhibits, and on that assumption I have overruled the objection. You may proceed, Dr. Reed.

A. Well, I have already referred in my previous testimony to the fact that the plan of January 1, 1937, set up the device of a fixed millage as a means of permitting the creditors to receive something for the tax participation certificates which were offered them as a part of the composition plan. Now, these fixed millages will provide a revenue, an increased revenue if the City continues to grow, and will not provide an increase of revenue if it does not continue to grow. That is, it is a device for permitting the creditors to share in growth if it takes place. I think that the plan as set forth in Ordinance 269 is a fair plan on this score. I think it is pretty severe on the City. I think to agree to pay 8 mills on debt down to 1977, irrespective of what the assessed valuations may be at that time, is a very severe restriction upon the city's fredom. The City is still a prisoner to its debts, and will be until 1977. It will not have very much of a surplus for borrowing or meeting other capital needs which might arise during that period, and capital needs are sure to arise in any municipality, especially a growing municipality, and especially one that was not too well provided with facilities to begin with, in spite of its very large debt. Now, I think that the device, however—

Mr. Gibson:

Excuse me. Wherein does all that relate to those exhibits?

A. Well, the question I was asked was as to the fairness—

Mr. Gibson:

I think I understood the Master to say he would allow the question to be answered, based on those exhibits, and you haven't yet answered anything in regard to those exhibits.

The Master:

Well, Mr. Gibson, let's wait for cross examination.

A. I will come to the exhibits in just a minute.

Mr. Gibson:

I understand; but I understand your whole answer was to be based on those exhibits.

Mr. Adams:

The question related to the plan as set up in Ordinances 269 and 289.

A. I was answering this question as a continuation to the answer of the previous question, which was as to the fairness of the plan so far as the immediate ability to pay is concerned.

Mr. Gibson:

That is not the question.

The Master:

Mr. Gibson, don't interrupt the witness, please.

A. I was answering, and I was going on to show now the significant part of it, which is the ability—the fairness of the plan as a means of getting as much out of the City for the creditors in the long run as could be done. And on that point I think it is a fair plan, and I think it is fair because it permits the creditors to share in the growth of the City if it takes place, which is, of course, what an honorable community would want its creditors to do. On the other hand, it is important from the point of view

of the creditors that the plan be easy enough on the City so that it will have a continued opportunity to grow, and its growth will not be checked by unresonable taxes or by taxes that are out of proportion to what other communities in competition with it for growth have to pay. Now, as to the estimated growth of the City which was presented by Mr. Shaw in Exhibit No. 22. I think Mr. Shaw has adopted the only practical plan for estimating the future growth of the City. That is, he has projected the rate of growth from 1930, the first census which Coral Gables, as a municipality, experienced, and to 1940; he has projected that at 3.5% per annum growth average on the next ten years. Any other method would involve conjecture. I am perfectly ready to admit that when you get into the future, that no man can definitely tell just exactly what will be the situation at any one given year from now on. It may be that in the year 1961-62 there will be some devastating cataclysm of nature which will destroy Coral Gables and there won't be any Coral Gables and the whole thing will be completely wiped out. That's a conjecture, a pure conjecture. And, on the other hand, there may be some new industry or development occur in southern Florida which will make this a city of—Coral Gables a City of 150,000 people. That's pure conjecture. What Mr. Shaw has done is to do the only thing, the only scientific and logical thing you could do, is continue existing experience into the future, and while I don't think anybody would want to commit themselves to the proposition that there will be 28,065 persons in Coral Gables in 1977, that's the most rational guess that a person can make if they have to project the thing that far. Now, in projecting financial plans into the future, that is the only basis that you could use, is the basis of the increase in population and the increase in assessed valuation. Now, Coral Gables' assessed valuations will increase, in all probability, pari passu with their increasing population,

because Coral Gables is a residential city, and most of the people who come there will come to build homes, and population and assessed valuation will go along together. Now, those are the two portions of this table which are essential to the future ability of the City to meet its obligations, and I think that it is a very fair estimate, as such estimates go, of what the City will be able to do, and if it doesn't take place the T. P. C.s will not get so much, and if it does take place they will get what he has estimated here, and if further growth occurs, they will get more, and that's really all that can be said about it. Now, I think that it is fair, although it imposes, as I said before, a very heavy burden upon the City, and one which is very rigid, and which interferes with much if any flexibility in dealing with its capital needs during the life of this arrangement. Now, does that answer the question?

Mr. Adams:
Yes, sir.

The Master:
Mr. Adams, I believe it is time to adjourn.

(Thereupon, a recess was taken from 12:00 o'clock noon, to 2:00 o'clock P. M.)

Thereupon, at 2:00 o'clock P. M., upon the hearing being reconvened, the following proceedings were had:

567 THOMAS H. REED was returned to the witness stand as a witness on behalf of the Petitioner, and being still under oath, further testified as follows:

Direct Examination (Resumed).

By Mr. Adams:

Q. Dr. Reed, the record shows that the proposed plan of refunding of 1931 was voted upon by the freeholders of Coral Gables and approved, and that the present plan of composition of 1937 was voted upon by the freeholders in an election, and also approved. What is your opinion of the effect of this fact upon the potential power of the City to perform the plan?

A. Well, if they hadn't voted to approve it there wouldn't be any plan. I don't think that that has a great deal to do with it. I don't think I can exactly estimate—they voted once to do it and didn't actually do it, and they voted again to do it, and they did, and I would say it was more or less of a stand-off.

Q. Now, this plan of composition as shown by the Ordinances 269 and 289, is that a permanent plan, in your opinion, for the permanent servicing of the debts, or a temporary plan that will need reorganization and refinancing in the future?

A. I think it is a plan which is calculated to be permanent. That is, it is as likely to be permanent as any plan that could have been worked out. It is based upon an estimate of growth which I have already testified I think is the best estimate of growth that can be made under the circumstances. I hesitate to say that any plan which runs for as long a period as this one does, is necessarily going to be gotten through with without further readjustment, but the elements of permanency in this plan are stronger than in a great many plans, and I think that the prospect of its being carried through to a successful conclusion according to its terms are pretty good.

Q. Please give your opinion of the effect that an increase of the present city millage, in the light of the overlapping millage, would have upon the imediate ability of the City to pay its debts.

Mr. Lea:
I object, on the ground there has been no testimony introduced showing the present millage levied by the City.

Mr. Gibson:
There is no testimony regarding overlapping debts.

Mr. Adams:
There is both.

A. You have a present millage in these tables.

The Master:
The objection is overruled. I am quite sure that there is testimony in here; I don't know how full it is, but there certainly have been references to it.

Mr. Gibson:
Is there any testimony as to the amount of the overlapping debt?

Mr. Adams:
Yes.

The Master:
If you want to move to strike that letter, the motion will be considered.
A. The millages appear on Table 14.

The Master:
Exhibit 14?
A. Exhibit 14, yes. The present millage is 22 mills. Now, would you repeat your question?

Mr. Adams:
Read it back and see if I got it clear.

(Thereupon the following question was read by the Reporter: "Please give your opinion of the effect that an increase of the present city millage, in the light of the overlapping millage, would have upon the immediate ability of the City to pay its debts.")

A. I think an increase in the present City millage would be dangerous to the continued growth of the City of Coral Gables, and would rather tend to diminish the amount which the bondholders in the long run would receive under the plan of refunding. Do you want me to go on and comment upon the height of this tax rate, or not?

Q. Yes, if you think that has anything to do with it.

A. You better ask me a question, then.

Q. Please give your opinion of the height of this tax rate as it relates to the ability of the City to pay its obligations.

A. We I understand the situation, it is this, that the City's millage is 22 mills, and that the County's millage for most of the City is 69 mills on a 25% valuation. Now, that 25%, I understand, is approximated, and if it is 25% —and I am answering this hypothetically—it would give a true value county millage of about 17½ mills, and make the true value millage of the City of Coral Gables—of the taxpayer of Coral Gables, or paid by the taxpayers in Coral Gables, approximately 39.5 mills. That's very close, of course, to 4%. That is very high taxation. Now, on commercial property, property that is used for business or that is rented, a 4% tax on capital or value is a very high tax on income, and it would have a very serious effect even at its present height upon the possibility of investment in Coral Gables in apartments and store, and things of that sort, where a return upon the investment is

expected. It has less effect upon the construction of homes which people are going to live in, because they charge those things into their cost of living, and they are not as—they don't watch them as investors do who are expecting to earn interest on their money; but it is a high rate, and it is a very high rate as contrasted with the average tax rates throughout the country. There is only one source that I know of figures on the average tax rates, reduced to true value, in the country, and that is an article which appears annually in the National Municipal Review prepared by the Detroit Bureau of Governmental Research, by people on their staff, and this has been running for a good many years, and it shows that for all cities in the country—this is Volume 29, No. 12, dated December, 1940, of the National Municipal Review, at Page 795. It shows—

Mr. Gibson:
Just a minute, please.

Mr. Clarke:
December, 1940?
A. Yes.

Mr. Gibson:
Your Honor, it is hearsay evidence.

Mr. Lea:
I hate to interrupt Dr. Reed, but I don't think it is competent for him to read from a book. He is testifying as an expert. He specifically says he is reading somebody else's works. I think it would be no more competent than reading a statement from the chairman of the bondholders' committee. I don't want to be small about it, but I don't think it is right to come into the record.

The Master:

Well, I will reserve a ruling on that I don't know what's in the report, but it is certainly a subject on which the Master would like to be informed, and I take it that that is a standard publication, but I will reserve the ruling on that.

Mr. Gibson:

Give us the volume and number and everything again.

A. The Volume number is 29; the number is 12, and the month is December, 1940, and the page is 795. And it shows that the average adjusted rate—that's the rate adjusted to 100% valuation for all cities of 30,000 in the United States is $28.01 per $1,000.00, which is the same as 28 mills; and for cities 30,000 to 50,000, which is the nearest to population of Coral Gables of any of these—

Mr. Clarke:

What was that first figure, again?

A. For cities in general, 28.01. Now, you can call that either mills, or dollars on the thousand. Now, it is given here as Dollars on the Thousand. And for cities from 30 to 50,000, it is 27.65 mills. Now, those are the per capita averages for 250 American cities. The individual figures for the individual cities are given in a table that is connected with this, and the percentages of true to assessed value are given.

The Master:

Cite the page on that.

A. Well, this table begins on Page 798 and runs to Page 810, with its footnotes.

Mr. Lea:

I gather, Doctor, you are going to introduce that in evidence.

A. Well, that's up to the counsel; I don't know how he wants to handle it.

Mr. Clarke:

They don't have any averages on cities of less than 30,000?

A. No; there aren't any. There are none available, generally, for cities throughout the country. In a state—whereas in Florida there is no State tax on property, the 39 mill rate is very high. There are some states like New Jersey where there is a State tax on property where it would not be so high, but for a state of this kind it is high, and it undoubtedly, in its present form, is our obstacle to growth, somewhat. To increase it would be dangerous. Now, I can't say that increasing it a mill would cause a catastrophe, but it is something like the situation where you put a knife into a man's chest, and it goes in three inches and a half and only makes a superficial wound, and it goes another quarter of an inch and it reaches his heart and he dies. Now, you can't tell just how much beyond the present rate you would have to go to produce serious trouble, but it is at the point where increases are dangerous.

Mr. Gibson:

The best way to tell that would be what other communities are doing, wouldn't it, Doctor?

A. Yes, I think that—Is this cross examination, or just general comment? I think the comparison—the purpose of introducing these figures is as a comparison, and I think that the rate of taxation is particularly important in a community which is situated in a metropolitan area where, for growth, it has to depend on competition with other

similar areas where taxes are perhaps lower than they are in the City in question.

Q. Is there a similar value to comparison of tax rates in communities that are not in competition with the one under examination?

A. No; the tax rates of communities that are not in competition are not anywhere near as important to it. A city situated in another part of Florida or in another part of the country is not so important. The only purpose for referring to these general averages of valuations—of rates, which I have given you, is to illustrate the fact that this is a high level of taxation.

Mr. Adams:

If the Master would like, I think the Doctor could spare that volume, and we will get him another one, and we will put this one in. We did not plan to offer it because the reference to it was so limited.

Mr. Gibson:

We object to that without an opportunity to examine it fully.

Mr. Lea:

I think it is irrelevant, in as much as the Doctor has stated it applies only to cities over 30,000.

The Master:

Well, it may be good—

Mr. Gibson: (Interrupting):

For argument of counsel. Of course, if it is restricted to the pages—

The Master:

I think it might be well to introduce it for identification, for the present, and it will be subject to examination of all counsel, and the Master, too.

(Instrument marked as Petitioner's Exhibit No. 41 for Identification.)

Mr. Gibson:

By whom is that published?

A. Published by the National Municipal League.

Mr. Gibson:

What is their address?

A. 290 Broadway, I think it is, New York City;—no—299 Broadway. This compilation has been made for a good many years now, annually, in the December number.

Q. Doctor, can you give any expert testimony on the relation of the taxes to the smaller population bracket towns, that is, under 30,000, and those in the bracket involved in that publication between 30 and 50,000?

A. Well, generally speaking, the tax rates of the smaller places are lower, but not always so. Sometimes quite properly they are higher. It depends upon what their services are, and the nature of their location, and their problems, and so on, but the general run would be, the smaller the community, usually the lower its tax rate, all other things being equal.

Q. What, in your opinion, has been the effect of the partial execution of the plan of composition upon the financial situation of the City on June 30, 1940, as shown by Exhibit 12.

A. Which is Exhibit 12, now?

Q. That's the situation as of June 30, 1940.

A. This is the refunding situation. What I think you want to ask me is the general financial—you have asked me about this before. I think that that is obvious. I think what you want to ask me is the question concerning—

Mr. Lea:

I object to the witness asking himself a question.

The Master:

You better get your question straight, Mr. Adams. I think you better strike that.

Mr. Adams:

Strike that and I will re-state it.

Q. What in your opinion has been the effect of the partial execution of the plan of composition upon the general financial situation of the City?

A. I think it has been very good. The City—I want Exhibit No. 14.—Exhibit 14 shows the rates and assessed valuations and the amounts of the levies and the amounts of the tax collections in the current years. I already commended on those once this morning, and it indicates that the City has attained a much better position with relation to the tax collection and general revenue than it had before. This other exhibit, No. 40, I think it is, Exhibit 40, which shows the receipts and expenditures of the City for the year 1939-40, shows—I have computed those receipts in a slightly different manner than they appear there, but using the same data, the total receipts of the City for the year 1939-40, in cash, were $517,895.38;—

Mr. Gibson:

Excuse me; what are you reading from, Doctor?

A. I am reading from a memorandum of my own, at the present time.

Mr. Gibson:

From what was that prepared or compiled?

A. Compiled from Exhibit 40. That is, I, instead of—I added in to the tax receipts which are given here, and the other receipts which appear here, that is, I added the taxes for debt service and the tax receipts for operation, and the delinquent collections which are shown here, and

the departmental revenues, the license revenues, and other miscellaneous revenues. I'll read you the items, if you like.

Mr. Gibson:
Just a minute, if you like.

Mr. Adams:
Do you want to make an objection?

Mr. Gibson:
No; go ahead.

Mr. Lea:
The only objection I have to make is that the City records don't reflect true receipts.
A. Do they show true receipts?

Mr. Adams:
He has analyzed the Exhibit 40.

The Master:
I understand all of the figures you have made there are from that exhibit?
A. Yes, sir.

The Master:
Then proceed.
A. I find a total of cash receipts for the year 1939-40 of $517,895.38, which includes certain non-recurring receipts. They have an installment on the sale of the Coliseum for $5,000.00, and an item of something over $10,000—$10,625.00 of money recovered from a defaulter. Those will not recur again, let's hope. The actual current total revenue receipts were $502,269.96. That is against, or as compared with total revenue receipts in 1933-34 of

$333,070.12, when I made my study previously. Those figures are taken from my report, which is in evidence.

The Master:

Just a minute. In evidence, as what?

A. As Exhibit 18.

Mr. Adams:

It is identified as Exhibit 18; I don't believe it has been admitted in evidence yet.

A. Now, that indicates a very much healthier situation so far as receipts were concerned, and that's back only six years ago, and I think that situation, it is due, of course, in part to the growth of Coral Gables, and that growth has been due in considerable degree to the adoption of a reasonable and fair plan of composition, because it has restored public confidence in Coral Gables, which has made people confident that they will not be subject to confiscatory taxation, and while there are other factors such as the general growth of Florida and of the Miami area which have depended on a great many factors such as the disturbance in Europe, and the fact that the dollar was devaluated, and a lot of our citizens who were living abroad on fixed incomes came back home, too, and a great many to live in Florida. There are a great many factors to enter into it, but Coral Gables itself, as contrasted with other parts of the Miami area, could not have grown to any great extent as long as there was a fear on the part of the purchasers of property that their property might be subjected at any time to confiscatory taxation. Now, that has been relieved to a large degree by the adoption of the present plan. I think that the psychological effect of the adoption of a plan of composition with their creditors was especially important in Coral Gables because of the enormous publicity that had been given to Coral Gables in her default. Of course, Coral Gables was one of the

most notable real estate promotions we have known of in the United States. The catastrophe was terrific when it blew up, and it was widely publicized. There were certain scandalous features connected with its default which were publicized through the S. E. C. investigation of the bondholders' protective committee and the refunding plans of that time, and in order to put Coral Gables back in the good graces of the American people, some kind of a settlement was necessary.

Mr. Gibson:

One of the most notably easy settlements, too, wasn't it?

A. Are you cross examining me?

Mr. Gibson:

I just wanted to ask you if that wasn't a fact.

The Master:

Strike that question.

(The Witness):

A. I'm perfectly willing to answer the question.

Mr. Adams:

Mr. Gibson, in defense of my witness, the Master has a number of times courteously suggested that you refrain, and we would appreciate it, too.

Mr. Gibson:

In defense of my position, too, I would like to have the witness confine himself closer to the questions and not ramble so much. The objections I made, at the time I made them, I made in good faith, and I still think that they are good objections. If the witness wants to be free from everything, I would like to have the witness confine him-

self as closely as possible to pertinent questions from you. That's my position in answering what you have to say.

Mr. Adams:
He is answering the questions.

The Master:
The witness is expressing his opinion, and he will have to be allowed to state it in his own way. If he says more than is necessary, all of that will be taken into consideration, but the witness will have to be allowed to express himself in his own way. Proceed.

A. (Continuing) I have already testified that in my opinion the settlement was fair and reasonable and of a character calculated ultimately to produce for the creditors the largest possible return on their original investment, and I am prepared to stand on that. Does that answer your question?

Q. Yes, that answers the question. Now, Doctor, can you give an opinion about the operating costs in Coral Gables, as they relate to the fairness, and ability of the City to pay this plan?

A. Yes. I think that the leeway now given for operating expenditure of the City of Coral Gables—

The Master: (Interrupting):
As shown by what?

A. As shown by Exhibit 40, is fair and reasonable, but not altogether generous, and certainly not excessive. In this Exhibit 40, on the first page devoted to figures, we have a total of expenditures for the year, of $365,289.62. Included in that is an item of $28,007.68 for loans and accounts of previous year which were paid during the year. That, of course, was not expenditure of the year; that

was paying something back, and there were, as a matter of fact, carry-overs of some of the expenditures of this year into the succeeding year, but the items of expenditure, that is, the obligations incurred, this is an accural statement—the obligations incurred during the year amounted to $337,281.94. That is, it is this item, less the—the $365,-000. item less the $28,000. item, or $337,281.94. That contrasts with $255,753.46 for the comparable items at the time I made my report in 1933-34. That is an increase of $81,528.48; I think that—of course, in the meantime the City has grown; that's an increase of 31% in expenditures. The City has grown in population 24.3% in the same period. However, that increase in expenditures is not at all unreasonable; in fact, I think it is fully justifiable. We suggested in 1934 that there might be a reduction of expenditure by about $20,000.00. We did not recommend that. We wouldn't have urged it. We only suggested it for the purpose of reaching a figure that would scrape the bottom in determining what the ability of the City to pay was at that very moment. The actual expenditures for the year 1933-34 were by no means excessive. We found that the government was carried on economically, and that its services were not excessive, taking into account the character of the original development of Coral Gables. Of course, the expenses of Coral Gables were and are high for a place of 8,200 people. An ordinary country village of 8,200 people, located in the Hinterland, would not spend as much money as Coral Gables does. However, the expenditures in Coral Gables are largely expended by the lavish scale on which the City was laid out, and the great pains that were taken to beautify it, which the City has had to keep up. If those expenditures were not kept up on that scale, Coral Gables would decline in attractiveness, and it would not grow as rapidly, and the bondholders would not achieve as much ultimate return as they will under the plan as it is carried out.

Now, the increases that have taken place since 1934, when we made our study, drawing them again from this table, and my original report, chiefly in the field of garbage collection, where there has been an increase in the cost of collection of $19,000.00. This has been occasioned partly by an increase in population, and partly by a better service. The City has also, in 1937, erected an incinerator at a cost of $23,000.00. That is, they spent out of current funds $23,000.00. There is still something remaining to be paid on that incinerator, but they spent out of current funds in 1939-40 $23,000.00 on that purpose. The provision of adequate garbage collection for the City of Coral Gables is a necessary incident to the City's growth, and its continued attractiveness to the class of people who come to Coral Gables. Another item of increase has been for equipment. The equipment purchased during the year 1939-40 amounted to $21,705.00. The equipment purchased in 1933-34 amounted to a very much smaller sum than that. I will have to verify this. In fact, the only item given here, (indicating report), for equipment, in 1933-34, is Street, Sewer equipment, which included a number of items, and was only $7,240.00.

The Master:

Where do you get that figure?

A. I get that figure from Exhibit 18, Table 1. It is in the center of the report.

Mr. Gibson:

Has Exhibit 18 ever been admitted in evidence, or is it only in for identification?

Mr. Adams:

It is in for identification.

Mr. Gibson:

Mr. Reporter, mark that, Exhibit 18 for Identification only.

A. (Continuing) The similar item in the report for this year is—in this exhibit here, No. 40—is $20,756.70. Now, one of the things we found when we studied Coral Gables before was the absence of proper equipment, and the fact that the equipment they had was running into decay, and it is obviously necessary to renew, periodically, the motor equipment, and things of that sort, of a City, and most of our cities, during the lean years of the depression, ran behind in their equipment maintenance. Coral Gables now is picking up its equipment maintenance. The only considerable item of increased expenditure which is truly operating—current operating in nature—it has no reference to equipment or capital expenditure—is in the Department of Safety, which includes police and fire, where the increase has actually been $33,000.00 between 1933-34 and 1939-40. That $33,000.00 represents an increase in the permanent number of policemen of five, and firemen of five. I don't know whether I am permitted to testify to that. I saw that on the payroll; five policemen and five firemen; which is—Coral Gables has to have a police force of larger than normal size for a city of its population because of its very—its contiguity to Miami, and the very large volume of tourist travel. All resorts have to have larger police forces, as a rule, than those which do not deal with resort population. The winter population, of course, is very much larger than the figure which has been referred to here as its permanent population, and I think that the increase in the police force is not unreasonable. I can't say, and don't intend to try to say that they could get along with one less policeman or that they need one more policeman, but by-and-large, these increases which have been made in the expenditures since 1934 are in line with the growth of the City and a reasonable amount of improvement in its services. I think that it is safe, and I am perfectly willing to say, and I will give it as my opinion as an expert in municipal finance

and administration, that the City of Coral Gables is today—its current operating expenditures are certainly not lavish.

Q. Dr. Reed, in considering any municipal refunding, its fairness to the creditors and the taxpayers both, should there be allowance made for the future capital improvements of the City?

A. There ought to be, if you are going to be realistic, because cities do have to have capital improvements. Now, they are as necessary as current operating expenses; they cannot be as easily predicted as to their exact amount, but you know very definitely that they will occur. Now, the present operating budget of the City of Coral Gables, its present operating revenues that are provided, besides current operating, allow for about 45 Thousand—40 to 50 Thousand Dollars for capital expenditure. Last year they spent $23,000.00 out of current money on an incinerator, and they spent $21,000. on the purchase of equipment. That's $44,700.00 and some odd dollars. And that is the maximum that Coral Gables now has, under her present rates of taxation and rates of collection, for that kind of purposes. I think it is safe to say they fully need that much in order to be able to—if they are not going to fail to have the capital equipment that they ought to have. I might say in passing that the very large debt that was incurred by the City of Coral Gables originally was large enough to have provided it with the most remarkable set of public works that any city of its size in the United States had, and it practically had none of them except streets and parkways when it got through with its borrowing operations. Some of that has got to be made up, now that the City is growing again.

Q. Doctor, in connection with this necessity for provision for capital improvements, it was testified yesterday by Mr. Curry and Mr. Garris that the maintenance of the city's streets, sidewalks and parkways and bridges had

been inadequate in the past, that there was immediate necessity for improvement of them, and in some cases new construction which should be carried out within the next six or seven years, in the following amounts: For streets, in the amount of $391,411.00; for sidewalks, $27,658.00; for parkways, $60,920.00; for bridges, $173,000.00; for work in dredging and opening the canal in the amount of $25,000.00. What if any effect upon your opinion about the necessity for capital improvements in the particular case of Coral Gables does this testimony indicate?

A. It affirms it. Of course, I am not attempting to base any opinion upon the accuracy of these estimates, but on the subject of street surfacing alone, we estimated in 1934 that street—there should be for street surfacing of the cheapest kind, that is, just reoiling, would cost—which was required at that time, to the extent of $195,000.00; and six years have passed without much being done in the way of additional maintenance. That is, the condition has not been corrected. It is getting worse as time goes on. But that testimony confirms my conclusion that there is need of large capital outlays for this city in the future.

Q. What would be your opinion of the effect upon the interests of the creditors if there were a lack of provision for such capital improvements?

A. Well, I really have already expressed that. I think that the maintenance of these superficial visible features of the Coral Gables situation, the streets, parkways, your bridges and things of that kind, is essential to its continued attractiveness. If it once gets the "fellow down at the heels" look, it is going to be further less attractive, and it is going to be more difficult to get them to come there and live.

Q. Doctor, in Section 8 of Ordinance 269, which is Exhibit 6, provision is made for debt service tax levy in a

sliding scale that you have testified about; provision is made for the handling of the proceeds of such tax levies; and then this section of the Ordinance says: "* * * If for any fiscal year the assessed valuation of property made subject to taxation hereunder, multiplied by the rate of tax above prescribed for such fiscal year, should equal an amount less than 33-1/3% of the amount appropriated for such fiscal year for purposes other than the Issue of January 1, 1937 Fund, then the rate of tax above prescribed for such fiscal year will be increased to a rate, the application of which to such assessed valuation will equal not less than 33-1/3% of the amount appropriated for such other purposes; provided, however, that in no event will the above prescribed rates ever be reduced; and, provided, further that in arriving at the amount of such total annual appropriations there shall be excluded any sums appropriated: (a) for the payment of the extraordinary, non-recurring expenses incident to the present readjustment and refunding; (b) for repairs necessitated by hurricanes or other major catastrophes beyond the control of the City; (c) for capital improvements in connection with garbage or sewage disposal; and (d) in an amount not exceeding 12½% of the amount appropriated for purposes other than the Issue of January 1, 1937 Fund, for major paving repairs and parkway extensions. If any monies appropriated for any of the foregoing specified purposes should not be expended for such purposes during the fiscal year for which they were appropriated, then the amount thereof not so expended shall be deemed included in the total amount of appropriations for purposes other than the Issue of January 1, 1937 Fund for such fiscal year, and if the rate of tax prescribed for such fiscal year for the Issue of January 1, 1937 Fund, multiplied by the assessed valuation of property against which it is imposed, should equal an amount less than 33-1/3% of the appropriations for purposes other than the Issue

of January 1, 1937 Fund, including the amount of such unexpended appropriations, there shall be paid into the Issue of January 1, 1937 Fund, on the last day of such fiscal year, such additional amount as may be necessary to increase the appropriation for the Issue of January 1, 1937 Fund to 33-1/3% of such total appropriation for other purposes. There will also be paid into said Issue of January 1, 1937 Fund so much of the proceeds of taxes levied for the fiscal year 1936-37 as may be equal to the amount of interest to accrue upon the Refunding Bonds herein authorized from January 1, 1937 to July 1, 1937." Now, that provision in the refunding plan, in your opinion, has what relation to this question of future capital expenditures, and state whether or not it is of any protective value to the creditors.

A. It is, of course, of some protective value to the creditors, because it prevents the City from increasing its appropriations which are, of course, derived from sources other than the money that is—it is derived from not only taxes, but other sources, and increasing it to a point where they exceed two-thirds of the amount which the creditors are entitled to under the other provisions of Section 8. Now, that was introduced, doubtless, as a check against the city's possibly running away with very large expenditures which they derived from other sources than tax revenue. As a matter of fact, however, those exceptions which you have read in there, the ones about the garbage and sewers, and the 12½% provision with regard to the street repairs, very largely remove the provision from any practical immediate effect. There is a considerable leeway at the present time between the amount of the annual levy under Section 8 for the debt of January 1, 1937, and the amount—it is considerably more, I mean, than two-thirds; I mean, considerably more than the one-third of the total of other appropriations and authorized—well, with those exceptions in there, I

don't expect to see it at any time in the immediate future, if any are imposed, any difficulty in itself in the City getting the money for capital improvements. The capital improvements which they need are mostly excepted in that provision. Now, on the other hand, the real difficulty that the City has in getting their money for capital improvements is in getting the people to pay the taxes to do it, and that's where the trouble comes. It is not out of this particular provision, which is a wise brake on the City, but is not likely to come into effect in the immediate.

Q. Can you express an opinion upon the importance, from the creditors' standpoint, of a tax situation in a city which results in mortgage loan agencies discounting the amount of loans that they will make in that city as compared to the amounts they will make in other neighboring cities?

Mr. Gibson:

Excuse me; will you read that question?

(Question read by the Reporter).

I don't know; is this man qualified as an expert witness on creditors' viewpoints?

Mr. Redfearn:

He is a qualified witness as to the effect the situation would have.

Mr. Gibson:

From a creditor's viewpoint?

A. I didn't understand you asked me about the creditors' viewpoint.

Q. The creditors of the City, I should have said; the creditors, the bondholders of the City.

A. Will you read the question again? I am a little confused about it.

(Question read, as follows: "Can you express an opinion upon the importance, from the creditors of the City's standpoint, of a tax situation in a city which results in mortgage loan agencies discounting the amount of loans that they will make in that city as compared to the amounts they will make in other neighboring cities.")

Mr. Gibson:

Excuse me; will you read that again, now?

(Question re-read by the Reporter.)

The Master:

I don't think that the foundation has been laid for the question, Mr. Adams.

Mr. Adams:

I will withdraw the question. And at this time we want to offer in evidence Exhibit No. 18, which has been tendered for identification, being the printed report of Dr. Reed from which he has testified, and upon which he has commented in his testimony.

Mr. Warren:

To the introduction of this Exhibit No. 18 we object, because the testimony has shown that it is based upon hearsay, it is based upon the work and conclusions of Mr. John C. Donehoo; further, for the reason that it speaks as of October 8, 1934, when the present plan was not in existence, and which plan did not come into existence until January 1, 1937; further, that it does not speak as of the date of the filing of the plan for composition or of the adoption of the plan for composition.

Mr. Gibson:

It is further objected to on the ground there is no showing this survey has been accepted or adopted by the City of Coral Gables.

Mr. Haycock:
Mr. Shaw testified to that before you came in.

The Master:
Exhibit 18, which has been filed for Identification, and is now offered in evidence, will be admitted subject to the condition that the information secured from John C. Donehoo shall be supplied in evidence.

(Instrument marked in evidence as Petitioner's Exhibit No. 18, subject to above reservation.)

Mr. Adams:
That's all we have, at this time.

Mr. Warren:
We are reserving cross examination, as I understand it, until a later hearing. Do you have anything else for this afternoon?

Mr. Adams:
Not at this time.

The Master:
I understand that counsel are not ready for cross examination at this time, and they reserve the right to cross examine later. Mr. Adams, did you have something?

Mr. Adams:
I want the record to show that the Petitioner is not closing its direct testimony, is all.

The Master:
That is so ordered.

(At this juncture of the proceedings there was an off-the-record discussion relative to the date for resuming

hearings for the taking of further evidence and cross examination of the Petitioner's witnesses, heretofore produced, at the conclusion of which, the hearing was scheduled for 2:00 o'clock P. M., March 3, 1941, same to be conducted at the City Hall of the City of Coral Gables, Florida.)

(Following the above, Mr. Clarke presented the following matter to the Master):

Mr. Clarke:

Your Honor, in the pleadings of C. J. Root, and particularly a Motion and Petition and Answer of C. J. Root, filed October 5, and previous pleadings, there are motions and claims by C. J. Root that he is not affected by this plan, that he has a separate agreement with the City whereby he is not affected by the present plan of composition, and whereby he seeks to be dismissed from this particular proceedings, and the injunction that has been previously ordered by the Court suspended as to him; and I have discussed with counsel for the City the possibility of having a hearing on that on the 31st of this month, and so far as I have been able to determine, that is satisfactory with everyone, excepting I have not discussed it with the Master, and I didn't feel free to discuss it with you except here at the hearing, that is for Friday of next week. (Discussion had relative to fixing of date for hearing above matter, off the record). I understand from the pleadings that Mr. Gibson has a somewhat similar Motion, and I take it he will want to present his at the same time.

Mr. Gibson:

I guess that's true. I hadn't any idea of getting into it that early. Of course, that gets us out of the picture if we prevail, and we won't be in this case any longer.

Mr. Clarke:

We had planned on having these hearings before any testimony was taken.

The Master:

All right, if there is no objection, that matter will be heard on Friday, the 31st of January, at 9:30, at my office.

(There being nothing further to be presented at this time, the Master declared the hearing adjourned at 3:30 P. M.).

In the United States District Court in and for the Southern District of Florida, Miami Division.

In the Matter of:
The City of Coral Gables, Florida.

In Bankruptcy No. 1867-M.

This Cause came on for further hearing before the Honorable F. M. Hudson, Special Master herein, at 2:00 o'clock P. M., in the offices of Redfearn & Ferrell, 12th Floor, DuPont Building, Miami, Florida, on the 3rd day of March, A. D. 1941.

There was present at said hearing on behalf of the Petitioner, the City of Coral Gables, Mr. Morton B. Adams, City Attorney; Mr. Ira C. Haycock; and Mr. D. H. Redfearn of the law firm of Redfearn & Ferrell, of counsel for the City; and Mr. G. N. Shaw, City Clerk. There was also present Mr. Edwin M. Clarke, of the law firm of Jennings & Watts, of Jacksonville, representing C. J. Root, a creditor; Mr. F. A. Berry, of the law firm of Bass, Berry & Simms, of Nashville, Tennessee, for the American National Bank of Nashville, Tennessee; and Mr.

Stuart B. Warren, of Wylie & Warren, of St. Petersburg, Florida, for American National Bank of Nashville, Tennessee, Albert Roberts, Jr. and J. Howard Gould, creditors.

Thereupon, the following proceedings were had:

Mr. Adams:

Your Honor, we have the city officials here who are necessary, to prove the data from the other communities in the county, and if the rule is to be continued, I expect we better swear them all and let them go out in the waiting room.

The Master:

Do you gentlemen want the rule?

Mr. Barry:

I expect we better have it, since Mr. Gibson isn't here, and he is the one that insisted on it.

(Thereupon, the several witnesses in question were called, sworn, and excluded from the room during the taking of testimony.)

Mr. Adams:

The first witness we will offer is Mr. Donehoo, to testify regarding Exhibit 18, the report of Dr. Reed of a survey made in the Gables in the year 1934, Mr. Donehoo being the assessor who participated with Dr. Reed in making this study.

597 JOHN C. DONEHOO was called as a witness on behalf of the Petitioner, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Adams:

Q. Will you please state your full name and residence, Mr. Donehoo?

A. John C. Donehoo, 1830 Seminole Boulevard, St. Petersburg, Florida.

Q. Mr. Donehoo, what particular line of work have you been in in recent years?

A. The appraisal of property for taxation, real estate in particular.

Q. With the view to qualifying you as an expert in this field, will you please state into the record your education and practical experience?

A. My education included four years of college at Auburn, properly known as Alabama Polytechnical Institute, in architectural engineering. My experience in the valuation of property for taxation began in Detroit, Michigan, in 1921, and continued through the year 1929—almost through the year 1929, where I was appraisal engineer and assistant tax assessor for the Board of Assessors in Detroit. In 1929 I went to Flint, Michigan as tax assessor, and remained there until November 1, 1931, when I came to St. Petersburg as tax assessor. I remained there until August, 1935, and during that period at St. Petersburg I also collaborated with some different agencies in administrative studies in Florida, particularly the Municipal Consultant Service. In 1936 I conducted a revaluation in West Palm Beach, Florida; and in October of that year I became associated with the Works Progress Administration in Washington as a consultant on matters involving the assessment of property, being a part-time em-

ployee, used when needed. In 1937 I conducted a revaluation in Hackensack, New Jersey, and from 1937 to 1940 I have been consultant on projects in these cities; Patterson, New Jersey; Tampa, Florida; Miami, Florida; Birmingham, Alabama. In addition to that I have been appraiser for the First Federal in St. Petersburg in the appraisal of property for loans. I was the organizer and first President of the National Association of Tax Assessing Officials, of which I am now an honorary life member.

Mr. Adams:
Do you care to cross examine as to his qualifications?

Mr. Clarke:
No.

Mr. Warren:
No.

Q. Mr. Donehoo, please state whether or not you did any work with Dr. Thomas H. Reed in the year 1934 upon the properties of the City of Coral Gables, and if so, what that work was.

A. I did become associated with Dr. Reed in an administrative study in Coral Gables in 1934, and made a study of the level of assessed value in the City of Coral Gables.

Q. I show you a document filed in this cause as Exhibit No. 18, and ask you whether you are familiar with that as being the report of Dr. Reed made up from the result of your studies and his own work on this subject?

A. Yes, sir, I do recognize it as such.

Q. Did you sign this report yourself?

A. No, sir, I didn't sign this report. I signed another which I submitted to Dr. Reed.

Q. Are you prepared to state whether or not the Exhibit 18 which you have, Dr. Reed's report, correctly reflects the assessment data which you reported to him?

A. Yes, sir, it does.

Q. I notice on Page 6, in the last paragraph in the right hand column, that Dr. Reed refers to your work "in attempting to determine the relation of assessed value to true value". Will you please define for the Court what you mean by "true value" there?

A. My definition is that it is the sum for which a property should sell, providing both the buyer and seller had equal knowledge of the advantages and disadvantages of past, present and future ownership.

Mr. Adams:

I believe that's all.

By the Master:

Q. What relation has that to the assessed value?

A. Well, that would determine to a great extent upon the administration, of the assessed value, by the particular tax assessor. That definition is the goal at which presumably each tax assessor is shooting when he makes an assessment; in other words, that's where he is trying to arrive.

Q. You didn't attempt to differentiate between the two, between assessed value and the true value?

A. No, sir, not particularly.

The Master:

That's all.

Mr. Adams:

We offer the witness for cross examination.

Mr. Warren:

Will you be here tomorrow, Mr. Donehoo?

The Witness:

No, sir, I will not. I am due in Birmingham today.

(Discussion, off the record.)

Cross Examination.

By Mr. Warren:

Q. Mr. Donehoo, did you make the tax assessments in the City of Coral Gables—their present assessments?

A. No, sir.

Q. Do you know whether or not these samples which you have made your report to Dr. Reed on and which he has incorporated in this Exhibit 18, whether those values are the values which are placed on the properties out there now, on those same properties?

A. No, sir, I do not.

Q. Mr. Donehoo, do you know whether or not these properties which were valued back in 1933 are carried on the tax rolls of the City of Coral Gables at the present time? Do you know how they are carried?

A. No.

Q. Or at what value?

A. No, sir.

Q. But these values that you placed here are pretty close to the true value?

A. At the time the survey was made.

Q. And that was the actual cash sale price?

A. As near as could be determined from a quick survey.

Q. Well, how did you determine that, Mr. Donehoo?

A. By an examination of the property; each individual property.

Q. You examined the properties themselves?

A. Yes, sir.

Q. And where did you get your data as to the sales price?

A. From transfers going through the county.

Q. Oh, I see. And you took the stamps on the deeds as the basis?

A. Yes, sir, where it is not contained in the body of the deed.

Q. Did you at that time, Mr. Donehoo, compare the tax assessed value of the county with the true value as you determined it to be?

A. No, sir.

Q. Did you go to the tax rolls of the county to determine what they were assessed for?

A. No, I didn't.

Q. Do you know who made the present assessments out at the City of Coral Gables?

A. I would assume the tax assessor, Mr. Bowen.

Q. Did you compare the City assessments with the value which you determined?

A. Yes, sir; that is the basis of the comparison, in 1933, the assessed value.

Q. This statement is contained in Mr. Reed's report on Page 9, at the top of the page on the right hand column: "The combined state and county tax rate in the greater part of Coral Gables is 61-5/8. An examination of fifty-eight pieces of property recently sold in Coral Gables shows a total city assessment of $463,680.00. The county assessment on the same property is $63,620, or 13.72 per cent of the city assessed valuation. This means that on a true value basis the county rate is 8.45 mills, making a total millage, on a true value basis, of only 23,45. If sales value as indicated by the table on the following page is taken, the true tax rate in Coral Gables is $25.62." Now, did you give a report to Mr. Reed containing those statistics?

A. No, sir.

Q. You don't know where he got those?

A. No, sir.

Mr. Warren:
That's all.

Cross Examination.

By Mr. Clarke:

Q. Will you turn to Pages 7 and 8 of the report, Mr. Donehoo. In the column in your table on Page 7 you refer to "1933 100% city assessed value"; does that refer to the value that was on the tax roll that year?

A. Yes, sir.

Q. Did you find it to be a fact that the City was assessing on a supposed 50% valuation back in 1933?

A. I don't recall that. What they purported to assess at. They may have used 50% as a basis, but—

Q. (Interrupting.) What I was getting at is, if you had doubled the assessed valuation to reach your total there.

A. No, sir. I am not sure I did not. I would have to refer to my original report to be absolutely sure about that, but I think these are the actual assessed values. I couldn't determine that without an examination of the tax roll for that year, to be sure.

Q. I see. Well, if you would assume that that was correct, I mean, that that was the method, and it was a matter of doubling the amount on the tax roll, will you look at the last schedule on the first column of Page 8 and, assuming that your basis on the other one was a doubling of the 50% value on the tax roll, are those two figures of $14,000 and $19,000, and some odd dollars, were they on the same basis with your figures on the previous page?

A. You mean $14,000,000?

Q. Yes; excuse me; 14 Millions and 19 Millions.

A. Yes; they would of necessity have to be on the same basis to make a comparison; they would have to be the same relative figures.

Q. Did you make a recommendation to the City as to the manner of future assessments, or propose some plan to them as to their future assessments?

A. I did, at a later date, yes, sir.

Q. Well, did you later participate in making those assessments?

A. Yes, sir.

Q. Those later assessments?

A. Yes, sir.

Q. That doesn't refer to these?

A. No, sir.

Q. Well, on what year was that that you did participate in making those assessments?

A. '34. 1934.

Q. That was the year after this?

A. Yes, sir. Here I would like to qualify that last answer; I participated in making recommendations for the year 1934.

Q. Were you familiar with the assessments that were made in 1934?

A. No, sir, I am not, without referring to the rolls for that particular year.

Q. Now, Mr. Donehoo, was the basis of your recommendation a full 100% of true value at the time?

A. Yes, sir. I didn't participate in the building valuation other than in an advisory capacity, but I participated in the land valuation to the establishment of block units.

Q. I see. So that your basis of 100% valuation—did that apply to all types of land and all types of buildings there as to your recommendation?

A. All types of land.

Q. Well, you did not participate in making any recommendation on the value of buildings?

A. No, sir, other than to recommend some technique to be followed in the process of making the valuation on the buildings.

Mr. Clarke:
That's all, unless these other gentlemen have some questions.

The Master:
Any further questions?

Mr. Warren:
Yes, sir.

Cross Examination (Resumed.)

By Mr. Warren:

Q. Mr. Donehoo, you said you made a recommendation on the values of the lands. Were lands in the outlying district assessed at 100% value, or did you recommend a sliding scale for those as they went out?

A. I did not know what the assessment was at the time; I mean, I didn't attempt to find out. The valuation —the recommendation was made on the basis of an analysis of every block in the City and the establishment of a control unit to be used in calculating the land value in each block, and that's as far as my participation extended. I didn't carry out the computations to determine what the valuation would be on each parcel of property.

Q. But in your recommendation of that particular system which you rerommended, you take a unit as a 100% unit in the middle of the City?

A. In the middle of each block.

Q. In the middle of each block?

A. In the middle of each block.

A. Yes. That unit governs for the inside lot in the middle of the block, and the whole block is calculated on the basis of that unit and the additions made for corner locations, additions to the value above the value of an inside lot.

Mr. Warren:
I believe that's all.

Re-Direct Examination.

By Mr. Adams:
Q. Mr. Donehoo, in selecting the parcels 1 through 80, used on Page 7 of Dr. Reed's report, were they selected because of their representative nature in different classes, or because you had available data regarding them?
A. They were selected because they were the latest available data, and while they generally did reflect a broad spread, I mean, some were vacant and some were improved, residential and improved business, and I think they very generally covered the City. They were not picked out; they were taken as they came from the county records.

Mr. Adams:
That's all, I believe.

Re-Cross Examination.

By Mr. Clarke:
Q. I would like to ask a question. Mr. Donehoo, taking as the basis the valuations determined in 1934, and assuming that since 1934 there have been building permits in 1935 of $496,000.00, in 1936 of $1,400,000.00, in 1937 of $1,200,000.00, in 1938 of $1,087,000.00, in 1939 of $1,195,000.00 and 1940 of $1,750,000.00, and based on your experience and opinion, the assessed valuation of the land in the City of Coral Gables, would it now be more or less than in 1934?
A. Well, you are asking specifically the relationship of the probable assessed value of the land in 1941 as against 1934?

Q. Yes.

A. Would you relate the increase in the building permits again?

Q. I gave you the building permits to show you the amounts.

A. I believe there is no doubt but that the value of the land would be greater now than in 1934.

Q. You mean the land and the buildings together?

A. Yes, sir; that is the total sum appearing on the tax rolls.

Q. Well, how would the growth shown by those building permits affect the value of vacant land, if at all?

A. It wouldn't affect it particularly.

Q. But you do think it would affect it to the extent of showing an increased across-the-board assessed valuation in the City?

A. Yes, sir, to some extent. Of course, not to the extent of the amount of the permits. Permits might include repairs, and things of that sort, in governmental buildings.

Mr. Clarke:

No further questions.

Mr. Adams:

That's all.

(Witness excused.)

Mr. Adams:

We now reoffer Exhibit No. 18 in evidence.

Mr. Warren:

For the record, we renew the objections heretofore made.

Mr. Clarke:

Specifically, because it is not relevant, because it refers to a time considerably previous to the date of the refunding program, and further previous to the time of the filing of the petition in bankruptcy.

The Master:

Let the exhibit be filed; it is admitted.

(Thereupon, the said exhibit was marked in evidence as Petitioner's Exhibit No. 18.)

610 SYLVA G. MARTIN was called as a witness on behalf of the Petitioner, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Adams:

Q. Mrs. Martin, will you please give your full name and what connection you have, if any, with the city government of South Miami?

A. Sylva G. Martin, City Clerk, Tax Assessor, and Tax Collector of South Miami.

Q. I hand you a certificate which was filed as Exhibit No. 31 in this case. Can you identify that as your certificate?

A. Yes, Mr. Adams.

Q. Do you have with you a copy of the ordinance or resolution making the tax levy for the year 1939 tax roll?

A. I do. (Producing same.)

Mr. Adams:

We offer that in evidence, unless counsel will agree to the figure going in and relieving the record of that volume.

And, there are about eight or ten towns, I might say, to be covered at this time.

Mr. Clarke:
Mr. Adams, I think it is best to let it go in evidence, because it is an account; that's what we didn't like about the certificate; it just gave the aggregate of it.

Mr. Adams:
We offer this in evidence; it is Ordinance No. 122 of the City of South Miami, dated August 15, 1939; we offer it as Exhibit No. 42.

The Master:
Any objection?

Mr. Warren:
The only objection is as to relevancy, if the Court please, so far as I can see right now. I can't see that it is relevant for the purpose of showing that the City of Coral Gables is insolvent and unable to pay its debts.

The Master:
It may be admitted.

Mr. Berry:
You might add to that, that in the absence of the showing that the two cities are comparable from the same standpoint, we object to it as being immaterial and irrelevant.

The Master:
Admitted as Exhibit 42.

(The instrument referred to was marked in evidence as Petitioner's Exhibit No. 42.)

Q. Mrs. Martin, what basis of assessment was used in making the 1939 tax roll?

A. Fifty per cent of the fair market value, as set by the charter.

Q. That you should use that basis?

A. Yes; we are limited to 50%.

Q. Do you have the figures shown by your building permits in the years 1936 through 1940, giving the total amount of building in those years?

A. Yes, I have.

Q. How much was that?

A. The total for the five years was $313,904.00.

Q. Does that include repairs, and new construction?

A. Yes.

Q. All of it?

A. Yes, that's everything.

Q. Are your records so separated that you could separate the repairs from the new construction?

A. It could be done by going over each individual permit; the permit application specifies whether it is new construction, alterations, repairs, or what.

Q. But you haven't carried that separation into your record?

A. No, I have not.

Q. Now, in the year 1940 alone, what is that total figure of permits?

A. That was the lowest year; it was $38,980.00.

Mr. Adams:

Now, we would like to offer Mrs. Martin for cross examination.

Cross Examination.

By Mr. Clarke:

Q. Mrs. Martin, what is the average valuation placed on all improved property? That is, the number of pieces

or the total valuation of improved property, divided by the number of improved pieces of property you have?

A. I am afraid I am not prepared to answer that question.

Mr. Clarke:

That's the only one I wanted to ask you.

A. I'm sorry. Will you ask that question again.

The Master:

Let the Reporter read the question.

(Question read by the Reporter.)

A. I wouldn't want to answer that question without checking the records.

(At this time some off-the-record questions were asked the witness by the Master and by Counsel, after which the following interrogation was conducted.)

By Mr. Clarke:

Q. Mrs. Martin, did you say 700 pieces, and a $300,000.00 value?

A. I am fairly certain of the number of improved pieces; that's around 700; but I am not positive—we had a total roll of about $700,000.00; and I am not clear in my mind now whether the unimproved value was the $300,000.00 and the improved about $400,000.00, or turn about; I know those are the approximate figures.

Q. Would your figure then, on the basis of—you know it was either 300,000 or 400,00, the improved—

A. It is around that figures, yes.

Q. Would you figure the average valuation, then, of each piece of improved property on the basis of those two figures?

A. I would rather not make a definite statement, as I said, without having a chance to verify the actual figures on the roll.

Q. Well, on the basis of $300,000.00 valuation, with 700 pieces of property, I calculate it $430.00 a parcel; an average of that.

A. That seems awfully low.

Q. And on the basis of $400,000.00—

A. (Interrupting.) I expect that average would come somewhere close to being right, because we have a large colored section, and of course that reduces the average considerably.

Q. And do you know what per cent, or approximately what per cent of your number of pieces of improved property is colored property?

A. I would say pretty close to 40%. We have a 50% colored population

Q. What is the area of your town, Mrs. Martin?

A. By charter, it is three and one-eighth square miles; thanks to quo warranto, it is about two square miles.

Q. Two square miles now?

A. Yes, sir.

Q. Do you have the type of improvements that are present in Coral Gables, like the County Club?

A. No.

Q. And large municipal buildings?

A. No, we do not.

Q. You cater to a different income bracket than Coral Gables; is that right?

A. Yes, we do, quite differently.

Mr. Clarke:

That's all.

Mr. Adams:

Just one question along that line. Mrs. Martin, in the north end of South Miami, what's left of it after the

Court exclusions near Bird and Red Road, are the improvements comparable to those across Red Road in Coral Gables?

A. Yes, sir, in the average Coral Gables.

Mr. Adams:

That's all.

Mr. Warren:

What are those improvements?

A. Those are houses that are being erected now on property that was excluded by quo warranto; two-bedroom homes.

Mr. Adams:

Residences?

A. Yes, residences.

Mr. Clarke:

Two-bedroom?

A. Yes.

Mr. Warren:

They are excluded from the town, aren't they?

A. The property was excluded from the town before the houses were built. We also have some houses in the town that are very comparable to Coral Gables, come to think of it, up in that section there.

Mr. Adams:

In other words, the area of South Miami north of Hardee, or Miller Road, probably, and west of Red Road inside and outside the boundary of South Miami, is about the same type of residential development in buildings as on the east side of Red Road in the Gables?

A. Yes, beginning with the south side of Miller Road north, including Cambridge Lawns; that's the subdivision on Miller Road; that has 29 houses.

Mr. Clarke:

That's out of your City now?

A. Oh, no; that's included; that's some that's still in.

Mr. Warren:

This 50% of the fair market value on which your tax roll is set up, is that 50% of sales price, or how is that arrived at?

A. It is arrived at as nearly as possible at current market figures, yes.

Mr. Warren:

You assess those taxes?

A. Yes, sir.

Mr. Warren:

How do you assess the vacant lots down there?

A. On the same basis.

Mr. Warren:

On the same basis?

A. On the same basis, yes, sir.

Mr. Warren:

I believe that's all.

Mr. Adams:

That's all.

(Witness excused.)

616 MABLE B. VALLETTE was called as a witness on behalf of the Petitioner, and being first duly sworn testified as follows:

Direct Examination.

By Mr. Adams:

Q. Please state your full name and what official connection you have with North Miami Beach.

A. Mable B. Vallette is my name, and I am City Clerk and Tax Assessor and Tax Collector.

Q. How long have you held these positions?

A. Two years last November.

Q. Do you have a copy of the ordinance making the tax levy for the year 1939 with you?

A. No, I do not; I have the year 1940; I didn't understand it to be a certain year.

Q. Do you know what the millage was in the year 1939?

A. Seventeen mills.

Q. Does the City have any debt, and levy any debt service millage?

A. No, we do not; no indebtedness.

Q. What is the basis of your assessment? One hundred per cent of the true or full value, or some lesser per cent?

A. About 50%; practically 50%.

Q. Do you have the figures on the total building permits for the years 1936 through 1940, inclusive?

A. I do.

Q. How much were they?

A. 1940 I totaled separately. $187,588.70; that's 1936 through 1939, inclusive.

Q. '36 through '39 inclusive; and 1940 is how much?

A. $114,620.00.

Mr. Adams:

That's all; you may examine.

Cross Examination.

By Mr. Clarke:

Q. The 17 mills that was levied in 1939, do I understand that was levied solely for operating purposes?

A. There is no indebtedness.

Q. I know that, but was it levied solely for operating purposes, or was there some other purpose?

A. Well, I don't know that I know exactly what you mean. For improvements, and streets; it wasn't all administrative. It was for fire, and street, and fire department and police department.

Q. Was some of that for capital expenditure, like building the streets and curbs, and buildings?

A. No, no particular part of it.

Q. Well, how was that broken down in the levy ordinance?

A. I don't know just how it was broken down.

Q. Well, do you know how it was broken down in your budget, and the appropriation budget?

A. I can't remember the figures at all. I know there was so much for the fire department, and so much for the police department, and so much for administrative, but I have no idea what the budget was without looking at it.

Q. What does your charter provide with reference to making assessments, and the percentage you should use on making valuations on your assessment rolls?

A. I don't know.

Q. You say your actual basis is around 50%?

A. Around 50% valuation.

Q. What was your total valuation for 1939?

A. It was around $700,000.00.

Q. And how much of that was improved property and how much—roughly, how was it divided between improved property and unimproved property?

A. Most of it was unimproved. We have a great deal of acreage and swamps.

Q. Well, with regard to value, and not amount of land, but with regard to value, how much of the $700,000.00 was improved property, in round figures?

A. I don't know; I couldn't tell you.

Q. Would you be able to tell within $50,000.00?

A. $50,000.00? I don't know that I would. We have a great deal of territory, but the population is not very large, so naturally our improvements are not very much.

Q. Well, what is the average—if you know, what is the average value on your assessment roll of a piece of improved property, taking the average all the way across the board? I am speaking of the assessed valuation, now.

A. Oh, the assessed valuation; for an improved property? An average house?

Q. Yes; taking your worst of the houses, and your best houses, and taking the average.

A. I would say $250.00 or $300.00.

Q. That's your assessed valuation?

A. Yes, sir.

Q. But that's only half of the real value?

A. Yes, that's only half.

Q. Do you have any negro population in the City?

A. No, not any at all.

Q. Does your City possess the fine type of public buildings like golf courses and administrative buildings like they have in a place like Coral Gables?

A. No, none whatever.

Mr. Warren:

I just want to ask one question.

Cross Examination.

By Mr. Warren:

Q. Your town doesn't provide for their property holders, cutting the weeds and cutting the lawns?

A. Well, we give that service; there is no extra charge for it, but we have a mower.

Q. There is no extra charge for it?

A. No, there isn't an extra charge, but that goes in along with the fire department, and those things, and garbage collection.

Q. What is the type of population? I mean, the average citizen out there?

A. What do you mean? Carpenters, or what?

Q. Just the average citizen; about what income class is he in?

A. Oh, about what income?

Q. Yes.

A. I wouldn't know what to say was the average. Probably $1800.00 would be the average.

Q. The average income; that's the carpenter and high class mechanic?

A. Well, a great many people work here in town that live out there.

Mr. Warren:

No further questions.

Mr. Clarke:

I would like to move to strike the testimony on the same grounds we have objected to these others, that it is irrelevant and immaterial to the issues in this case and not shown to be a comparable community.

The Master:

The motion is denied; I will admit the testimony for what it is worth, though frankly I think it is of doubtful relevancy.

(Witness excused.)

621 C. LAWTON McCALL was called as a witness on behalf of the Petitioner, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Adams:

Q. Mr. McCall, will you please give your full name and your official connection with the Village of Miami Shores, and how long you have held that position?

A. My name is C. Lawton McCall, I am Village Manager, Tax Assessor and Tax Collector and Village Clerk of Miami Shores Village, which position I have held since December, 1935.

Q. I hand you a certificate marked Exhibit 34 in this cause, and ask you whether that was executed by you, and correctly reflects the original records of the City on the subject matters mentioned therein.

A. I signed and certified this certificate, and the information given therein is correct.

Q. Do you have the figures showing the entire building permits for the years 1936 through 1940 inclusive? Do you know what that is in the Village of Miami Shores?

A. No, but I can give them to you year by year.

Q. All right.

A. In 1936, there were 43 buildings, residence buildings, for a total amount of $303,695.00; 1937, 56 houses, $391,274.50; 1938, 126 residences and one golf club house,

totaling $811,550.00; 1939, there were 259 residences, 3 commercial buildings, totaling $1,627,685.00; in 1940, there were 189 residences, one filling station, 2 stores, and one girls' college, amounting to $1,607,601.50.

Mr. Adams:

That's all. You may cross examine.

Cross Examination.

By Mr. Warren:

Q. Mr. McCall, what is the assessed valuation of properties in Miami Shores Village?

A. The assessed valuation? I didn't understand your question.

Q. Yes, sir; the total assessed valuation for the tax roll.

A. The current roll is about $7,500,000.00.

Q. What is the population of Miami Shores Village?

A. Around 2000.

Q. What is the type of population?

A. The residents of the Village are principally business and professional men, and some retired people.

Q. How much vacant property in the Village?

A. About 70% vacant.

Q. What services does the Village furnish its residents and tax payers?

A. We furnish police protection, street light service, fire protection, general park and street parkway maintenance.

Q. The municipal improvements that you have in the City, Mr. McCall, were they made by the City or by the developers?

A. They were practically all put in by the developers; that is, I am talking about paving, streets, and sidewalks. They were all put in by the developers.

Q. And the lighting system was put in by the developers?
A. Quite a bit of it. We don't use all of it.
Q. You don't use all that was put in?
A. No.
Q. Do you have a sanitary sewer?
A. No.
Q. You use septic tanks?
A. Use septic tanks.

Mr. Warren:
That's all.

Mr. Clarke:
I would like to make the same motion as to the testimony of the previous two witnesses as to the testimony of this witness.

The Master:
The same ruling.

(Witness excused.)

Mr. Adams:
We have the printed Sixth Annual of the State of Florida, 1935, issued by the office of the Commissioner of Agriculture, and the printed release from the Department of Commerce, Bureau of Census, and we want to offer this compilation as Exhibit 43, being the populations of these various towns.

Mr. Clarke:
We will not make any objection to this. You prepared it yourself?

Mr. Adams:
Yes, this compilation of the various towns.

Mr. Warren:
No objection to putting it in, but I don't see the relevancy of it.

Mr. Clarke:
I mean we are not objecting to the manner of proof.

Mr. Warren:
All right.

The Master:
All right; admitted as Exhibit No. 43.

(Thereupon, the said instrument was marked in evidence as Petitioner's Exhibit No. 43.)

625 W. D. ROBERTS was called as a witness on behalf of the Petitioner, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Adams:
Q. Please give your name and official connection with the Town of Surfside.
A. W. D. Roberts, the Town Clerk, Tax Assessor and Tax Collector.
Q. How long have you held these jobs?
A. Since incorporation, May 17, 1935.
Q. I hand you a certificate executed by you on the 21st day of January, 1941, and filed in this suit as Exhibit No. 33. Does that certificate correctly reflect the data referred to therein as shown on the original records of your office?
A. That's right; it does.

Q. Do you have the figures of the total building permits issued since the incorporation of the Town?

A. Yes, I have.

Q. Would you please give us those, the aggregate total, if you have it, down through 1940?

A. I have them by years.

Q. That's all right.

A. 1936, $373,250.00; 1937, $168,335.00; 1938, $228,900.00; 1939, $370,150.00; 1940, $1,093,585.00.

Q. Does that include improvements and repairs, or is it all new buildings?

A. I have it broken down in case you would like to have it.

Q. Well, I just wanted to know which way it was; does that include everything?

A. It includes everything.

Q. All right.

Mr. Adams:

We submit the witness to cross examination.

Cross Examination.

By Mr. Warren:

Q. What is your total assessed value in the Town?

A. The total assessed value?

Q. The total assessed value on your tax roll?

A. I didn't bring that information along with me.

Q. The municipal improvements, Mr. Roberts, that were put in, were they put in by the Town or by a private developer?

A. Private individuals.

Q. Private individuals?

A. Yes, sir.

Q. What services does the Town render to its inhabitants?

A. Police protection, street lighting, garbage collection, zoning—

Q. You mean you have a zoning ordinance?

A. Yes, sir, zoning ordinance.

Q. Where you permit certain buildings of certain classes in certain places?

A. Yes, sir.

Q. What is the type of population?

A. For what year? The present time?

Q. The type of population at the present time, yes, sir.

A. I would say there is approximately 600 permanent—

Q. Six hundred permanent?

A. Yes, sir.

Q. And what kind of people are they? Are they laborers, or professional men, or just what type of population are they?

A. They are more or less the successful business man and retired people.

Q. From Miami? I mean, business men of Miami?

A. Business men of Miami, and the retired people are from the North, usually.

Q. What is the average house—the value of the average house out there?

A. That's rather hard to say. We have a minimum requirement of 17,500 cubic feet, which makes an approximate $5,000 house.

Q. You don't have the improvements like a golf course and public buildings like Coral Gables?

A. No. We do have a Town Hall, but that is the only public improvement we have.

Mr. Warren:

That's all.

Mr. Clarke:

Is it a nice palatial town hall like in Coral Gables?

A. No.

Mr. Clarke:
That's all. I would like to renew that same motion we have made to the previous three witnesses.

The Master:
The same ruling.

(Witness excused.)

628 J. A. MICHAEL was called as a witness on behalf of the Petitioner, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Adams:
Q. Mr. Michael, please give your full name and official connection, if any, with the Town of Miami Springs.
A. J. Alden Michael, Town Clerk, Tax Assessor and Tax Collector.
Q. How long have you held these positions?
A. Since October, 1932.
Q. I hand you a certificate filed in this cause as Exhibit No. 32, purporting to be signed by you, and ask you whether the data shown therein correctly reflects the original records of the City in your office?
A. Yes, sir.
Q. Can you state the total building permits for the years 1936 through 1940?
A. Yes, sir, I have that here. 1936, the building permits amounted to $231,623.00; 1937, $239,200.00; 1938, $120,911; 1939, $174,653.00; and 1940, $215,312.00.

Mr. Adams:
You may examine the witness.

Cross Examination.

By Mr. Warren:

Q. Mr. Michael, do you know the current tax roll, the amount of the assessed valuation of the current tax roll?

A. The 1940 tax roll?

Q. Yes, sir.

A. Not the 1940; I didn't bring that up to date; but I have the 1939.

Q. What is the 1939?

A. $2,387,572.00.

Q. Now, Mr. Michael, the municipal improvements which you have in your town out there, were they put in by private developers, or were they put in by the town?

A. By private developers.

Q. By private developers?

A. The Curtis Properties built houses and sold them, and individuals built houses and sold them.

Q. What services does your town render to its inhabitants?

A. The police patrol, police radio, collection of garbage, distribution of water, upkeep of the streets, and all of that.

Q. Now, this distribution of water, do you have your own water system or do you buy it?

A. No, we don't; we purchase that from the City of Miami.

Q. And you charge your consumers?

A. We charge our consumers.

Q. You charge them more than you pay for it?

A. Naturally.

Q. Does the town have the golf courses and elaborate public buildings that Coral Gables does?

A. No, sir. We have a golf course there, but it is owned by the City of Miami, and we derive no revenue

from it, and it is not taxed. I think it was given to the City of Miami by the developer, Mr. Curtis, as a source of fresh water for all of the metropolitan Miami area, and it has to be maintained as a golf course; it cannot be subdivided. We get no revenue from it.

Q. What is your type of population, Mr. Michael?

A. The type of population would be the average working man that—well, we might call them "white-collar" men, employed in the City of Miami, employed by the Eastern Air Lines, and employed by race tracks and possibly those that own horses, perhaps, and trainers.

Q. And what would you say perhaps their average income would be for a year?

A. Well, that I wouldn't be able to determine and tell you how much they earn.

Q. Well, what is the average house worth out there?

A. It is mostly restricted to $4,500 or $5,000, the average 50-foot lot.

Q. And that's about the type of people that would own that—

A. That's right.

Q. The people that would own that type of house are the type of people you have got out there?

A. Yes, sir.

Mr. Warren:

That's all.

Cross Examination.

By Mr. Clarke:

Q. What figures do these $2,300,000 valuations split up into between improved and unimproved property, Mr. Michael?

A. Between the improved and unimproved?

Q. Yes; how much of it is improved property in value, in round figures?

A. That's sort of hard for me to say, without referring to the tax roll where it is split up.

Q. Would you be able to give an approximate figure on it, say within $25,000.00?

A. I doubt it very much.

Q. Do you know how many pieces of improved property there are on your rolls in round figures?

A. Why, I would say there would probably be around 300 and—we have 343 water meters, so that would give you the idea of the number of buildings, perhaps. Of course, some places have more than one water meter. There are 4,000 lots in the town site.

Q. Well, what is the average—what would you say would be the average assessed value of the improved property out there?

A. It is a town of homes, mostly; there is not much business there.

Q. Well, what would you say was the average assessment?

A. Around $5,000.00.

Q. The actual assessment on the tax rolls?

A. Around $5,000.00.

Mr. Clarke:

That's all.

Re-Direct Examination.

By Mr. Adams:

Q. Mr. Michael, you have in addition to the average residences, quite a number of residences occupied by retired people, don't you, or people of means?

A. Yes, sir.

Q. About how many, and the average value of those?

A. Oh, there may be eight or ten, perhaps, that are in the upper brackets, and the houses run up to, say, $20,000.00, in valuation; Ten to Twenty.

Mr. Adams:
That's all.

Mr. Clarke:
Do you have any colored population?
A. No colored population in the town site; they are not allowed except as domestics.

Mr. Clarke:
That's all.

Mr. Adams:
That's all.

Mr. Clarke:
Now I would like to renew the motion, if the Court please.

The Master:
The same ruling.

(Witness excused.)

634 P. E. HACKNEY was called as a witness on behalf of the Petitioner, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Adams:
Q. Will you please state your name and official connection with the City of Hialeah, Mr. Hackney?
A. P. E. Hackney, Clerk and Treasurer of the City of Hialeah.

Mr. Adams:

We offer in evidence by Mr. Hackney a certified copy of Ordinance No. 207, containing the millage, taxable property, and levying the taxes in the City of Hialeah for the fiscal year beginning July 1, 1939, and ending June 30, 1940.

Q. Mr. Hackney, in Section 4 of this ordinance I see a levy of four mills on the dollar, for the fiscal year, for the benefit of the emergency fund. What general municipal purpose is the emergency fund used for?

A. It is for improvements and machinery and trucks and things like that.

Q. It doesn't involve the ordinary salary and operations account?

A. No, sir.

Mr. Clarke:

May I ask a qualifying question in that regard?

Mr. Adams:

Yes, sir.

By Mr. Clarke:

Q. What is your total millage for the year?

A. Fourteen.

Q. I mean, over-all?

A. Fourteen Mills.

Q. Where do you get money?

A. Well, we have our general fund; we have a race track out there, where we get part of our expenses out of with the head tax out of the race track of approximately $50,000.00 a year.

Q. You operate your city by your general operating expenses out of your race track?

A. Out of our race track, and out of our fines and forfeitures and building permits, and things like that. They all go into the general fund.

Mr. Clarke:
That's all.

By Mr. Adams:
Q. Is this paper a true copy of the Ordinance No. 207 of the City of Hialeah, Mr. Hackney?
A. Yes, sir.

Mr. Adams:
We offer it in evidence as Exhibit No. 44.

Mr. Clarke:
The same objection, as to relevancy.

The Master:
Admitted in evidence.

(Said instrument was marked in evidence as Petitioner's Exhibit No. 44.)

Direct Examination (Resumed).

By Mr. Adams:
Q. Mr. Hackney, does this statement which I hand you show the true total of building permits for the years, 1936, 1937, 1938 and 1939, of the City of Hialeah?
A. Yes, sir.
Q. Does that include permits for repairs?
A. Yes, sir.

Mr. Adams:
We offer this in evidence as Exhibit No. 45.

Q. And I hand you another one; does it reflect the same information about the building permits for the year 1940?

A. Yes, sir.

Mr. Clarke:

What is the amount on that?

Mr. Adams:

$122,961.50, in the year 1940.

Mr. Clarke:

And is that one offered as Exhibit 46?

Mr. Adams:

Yes. We offer the four-years-in-one as Exhibit 45, and the year 1940 by itself as Exhibit 46.

Mr. Clarke:

We make the same objection, as to relevancy.

The Master:

The same ruling; admitted as exhibits 45 and 46.

(Said instruments were marked in evidence as Petitioner's Exhibits 45 and 46, respectively.)

Mr. Adams:

That's all; you may cross examine.

Cross Examination.

By Mr. Warren:

Q. Mr. Hackney, I notice the 10-mills levied for the refunding bonds in 1938. Have you completed your refunding?

A. Now?

Q. Yes.

A. Not entirely.

Q. You still have some out?

A. Yes; we still have some of the improvement bonds out; they are better than 90% refunded.

Q. What was the size of the bond issue?

A. The refunding?

Q. Yes.

A. $1,013,000.00.

Q. What is the size of the original issue?

A. The original issue was for the Million Dollars, plus interest.

Q. And you refunded on a 100% basis?

A. Yes, sir.

Q. And postponed maturity?

A. And 50% of the interest.

Q. And 50% of the interest?

A. Yes, sir.

Q. And 100% of the principal and 50% of the interest?

A. Yes, sir.

Q. Have you had any suits against you out there on these old bonds?

A. We have had, yes.

Q. Any pending now?

A. Two.

Q. For levy, or for payment?

A. For payment.

Q. I mean, to require a levy for payment?

A. No.

Q. Or to pay cash on, that you have got on hand?

A. Well, the suits were in before the refunding started —before we got through with the refunding.

Q. They are dormant now, though? You are not levying for them?

A. No, we're not levying for them.

Q. Did you file a Municipal Bankruptcy in order to get your refunding through?

A. No, sir.

Q. What is the type of population you have out there, Mr. Hackney?

A. Well, they are middle-class people.

Q. What is the average value of a home out there, of the average home, the value of the average home?

A. I would say about $1,500.00; they run from $1,500 to $5,000.

Q. What's that?

A. From $1,500 to $5,000.

Q. Are there any restrictions on building throughout the city?

A. Yes, sir.

Q. What are those restrictions?

A. Cubic-foot content in certain zones.

Q. In certain zones?

A. Yes, sir.

Q. Do you have any negro population?

A. Yes, sir.

Q. What percentage, approximately, is negro?

A. Oh, we have got about 200 niggers, altogether.

Q. 200?

A. That's about all.

Mr. Redfearn:

Not 200%.

A. No; not 200%; 200.

Q. What is the population of Hialeah?

A. 4,000, approximately; a few short of that, according to the census.

Q. What municipal improvements does Hialeah have?

A. Oh, they have their own water distributing system; that's all we own.

Mr. Warren:
I believe that's all.

(Witness excused.)

Mr. Warren:
We make the same motion as to relevancy.

The Master:
The same ruling.

640 MISS MOLLIE WALSH was called as a witness on behalf of the Petitioner, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Adams:
Q. Will you please state your full name and your official connection with the City of Hialeah?
A. Miss Mollie Walsh is my name; initials, Miss M. C. Walsh. Tax Assessor and Tax Collector, City of Hialeah.
Q. How long have you held this position?
A. Since September, 1935.
Q. In making the assessment roll, do you use the full 100% value of property, or some adjusted amount?
A. We use 50% of the valuation.
Q. In making the 1939 tax rolls, did you use this 50%?
A. Yes, we did.

Mr. Adams:
That's all.

Cross Examination.

By Mr. Warren:

Q. What is the current, or the assessed value of the current tax roll, Miss Walsh?

A. I have it here—the 1940 roll?

Q. Yes.

A. It is $3,836,443.08.

Q. And that's 50% valuation?

A. Yes, sir.

Q. What portion of that is improved? Could you tell me that?

A. No, I couldn't tell you that.

Q. What is the average value?

A. Yes—I could tell you; the amount—let's see—this might answer your question. The unimproved is $1,286,-633.08.

Q. And the other would be the difference?

A. Yes. But we also have the personal property in there; I don't know whether you would want that or not.

Mr. Adams:

Yes, you better give them that.

Mr. Clarke:

Is that included in the $3,000,000 figure?

A. Yes. The improved is $2,303,928.00, and the personal property is $245,882.00.

By Mr. Warren:

Q. Do you make any levy for operation?

A. Yes; our levy is—do you want the value of it, or what?

Q. No. This tax of 4 mills on the dollar, in Section 4 of the Ordinance—are you familiar with the ordinance?

A. Yes, sir.

Q. What "4" is that?

A. That's our "emergency fund" and "operating expenses"; and 10 mills for debt service.

Q. Most of your operating monies come from the race track and fines and forfeitures and building permits?

A. That's true.

Q. What is the value of the average home in Hialeah?

A. Well, I imagine $1,000.00 would probably take care of it, the average, or the mean average.

Q. And people who have the income that goes with that type of home live down there?

A. Yes, as a rule.

Q. It is a residential town, isn't it?

A. Yes, it is residential and business, mostly.

By Mr. Clarke:

Q. Does the assessed valuation include the race track? Is there any assessment on that?

A. Yes; it includes the race track.

Q. What is the assessed valuation of that?

A. It is approximately $600,000.00.

Q. That comes out of the $2,000,000 and some odd thousands of dollars of improved property?

A. Yes; that's true.

Q. And they pay an ad valorem tax as well as a head tax?

A. Yes, they do.

Mr. Clarke:

No further questions.

Mr. Adams:

One question. Does this total listed in Section 2 of your Ordinance, "Improvements", include the land value upon which the improvements are constructed?

A. I think it does, yes.

Mr. Adams:
That's all.

Mr. Barry:
We renew our motion to that testimony.

The Master:
The same ruling.

(Witness excused.)

643 J. HOUSTON GRIBBLE was called as a witness on behalf of the Petitioner, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Adams:

Q. Mr. Gribble, will you state your full name, please, and your official connection with the Town of North Miami?

A. J. Houston Gribble, Tax Assessor and collector.

Q. How long have you been tax assessor and collector of North Miami?

A. Since February 5, 1932.

Q. Will you please state whether or not the 1939 assessment roll was made using 100% of the true value of properties, or not?

A. No, sir, it was not.

Q. What percentage was used?

A. It was about 37½%.

Q. Do you have, or know officially, the millage that was applied to the assessed valuations in that year in making up your tax roll?

A. 30 mills for 1939.

Q. For 1939, yes, sir; was any part of that for debt service?

A. No, sir.

Q. Does the City have any outstanding bonded debts or notes?

A. Yes, sir.

Q. How are they serviced?

A. They just failed to assess anything for debts for that year.

Q. That's just a lump sum levy you made?

A. Yes, sir; that covered the maintenance, or operating.

Q. Do you know what the official records of the City show as to the total amount of buildings from 1936 on?

A. You mean in improvements? In numbers?

Q. Building permits.

A. No, sir, I don't have those. Miss Avil has that.

Mr. Adams:

That's all; you may cross examine.

Cross Examination.

By Mr. Clarke:

Q. You are limited to a 37½% basis of valuation by your charter, are you?

A. We have no charter.

Q. You operate under the general?

A. Yes, sir.

Q. Now, you may correct me, but does that not provide for a 100% valuation?

A. So far as I know it doesn't. We have never done that, or used a 100% valuation.

Q. So you operate under the general cities and towns Act in the State of Florida?

A. Yes, sir.

Mr. Clarke:

That's the only question I have. I have a motion to make.

The Master:

Any other questions?

Cross Examination.

By Mr. Warren:

Q. Mr. Gribble, when was the town incorporated?

A. February 5, 1926.

Q. Under what is known as the 150 Act, or 150 Population Act?

A. I wouldn't know as to that; I know it is an Act of '27, just from hearing it brought out in various cases and suits.

Q. What is your debt?

A. I am not in a position to state accurately what the amount is, but roughly, I know it is near $400,000.00.

Q. And what was your tax roll—current tax roll in 1939?

A. It runs a little better than $800,000, total assessed valuation; I don't remember the exact figure.

Q. Have you made any arrangement to take care of that debt?

Mr. Adams:

We object to that; it might be incriminating on the witness.

The Master:

I think that question is as relevant as some of yours.

(Off the record discussion had.)

Mr. Redfearn:
We object because it is irrelevant and immaterial.

The Master:
I have ruled on that.

A. That's a little out of my line. I don't know just what the City Fathers have planned so far as that goes.
Q. At least, they are making no levies at the present time for the payment of it?
A. No.

Mr. Clarke:
Tell me, generally speaking, what proportion of this $400,000.00 is for improved property?
A. I don't believe I understand the question.

Mr. Warren:
That was the debt; it was $800,000.00.

Mr. Clarke:
$800,000.00; excuse me. Of the $800,000.00 assessment, what part is for improved property and what part for vacant property, or vacant land?
A. Well, I didn't bring a memorandum here of the figures, but about 500—a little in excess of $500,000.00 is the non-exempt value, and I believe on the '39 roll the homestead exemptions ran about $150,000.00; and the difference there is taken up by properties that have been excluded from the town limits. Those figures are not accurate.

By Mr. Clarke:
Q. So at present your assessed valuation is nearer $650,000.00 instead of 800, counting only what's left in your city?
A. That's somewhere near the figure, yes.

Q. Now, I think I misunderstood—or rather, you misunderstood my question; I wasn't trying to break down homesteads and non-homesteads, but between improved property and vacant property—vacant lots.

A. Oh, I see.

Q. Do you know the approximate break-down between those two?

A. No, sir, I don't have those figures in my mind.

Q. Well, of course, all of the $150,000.00 homesteads, all of that is improved.

A. Yes, sir.

Q. And then of the remaining $500,000, would you say half of it was improved property, or more?

A. No, sir, not half of it; I know it wouldn't be half of it.

Q. Would you think $200,000 was the approximate figure?

A. Of the improved properties, you mean?

Q. Improved, not counting the homesteads.

A. I think so.

Q. That would make a total of $350,000 of improved homesteads and non-exempt improved properties?

A. Yes, sir.

Q. Do you know how many pieces of improved property you have, roughly speaking?

A. No, sir, I don't. I have never made a record of the number of improved properties.

Q. Well, what is the average, would you say, of assessed value of all classes of improved property—the average assessed valuation?

A. About $750.00. Of course, some are much higher, and some lower.

Mr. Clarke:

Thank you; that's all.

Mr. Adams:
That's all.

Mr. Clarke:
We make the same motion as to this witness' testimony.

The Master:
The same ruling.

(Witness excused.)

649 GERALD R. GREEN was called as a witness on behalf of the Petitioner, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Adams:

Q. Mr. Green, will you please give your full name and official connection with the government of the City of Miami, if any?

A. Gerald R. Green, Tax Assessor for the City of Miami.

Q. How long have you been tax assessor for the City of Miami?

A. Fifteen years.

Q. Do you prepare the assessment roll and the tax roll?

A. I do.

Q. In the year 1939, state whether or not you used a 100% valuation in preparing the assessment roll.

A. Well, if I may express it this way, a percentage of what? The price? Current price of property for that year?

Q. Well, just state whatever the basis was upon which you made your assessed valuation for tax purposes.

A. Well, the basis for the year ran about 67% of the then current price of all the sales that we could investigate.

Q. Now, in making the tax roll, what millages, separating them as to debt service and operating millage, was used for the year 1939?

A. I will have to refer to this (producing statement). We have six different districts in the City, and there are five different rates. Of course, there is one operating rate that applies—for operating expense, that applies to the city as a whole.

Q. What is that?

A. That rate was 15.2 for the year of 1939. The debt service millage rates, the highest was 15.1; that was, of course, the oldest part of the city, which was the oldest in greater amount of outstanding bonds, Coconut Grove, 13.3; Buena Vista, 12.4; Silver Bluff with 11.4; and then the territory that was unincorporated prior to the year 1925, and that was 9.8.

Q. Do those various debt service millages reflect the bonded indebtedness involved in the improvement of those various areas?

A. Well, whether it directly involved the improvement in those areas, it was the matter of time, as I understand it, when the bonds were issued, and the amount of area of the City which was subject to taxation for debt service. You see; this is a consolidation, you see, of three previously incorporated areas, and one district which had not been previously incorporated—or four areas that had been previously incorporated—and each district is required to pay the indebtedness that they brought into the consolidation, and the 9.8 represents the bonds that were issued after the consolidation which applied to the City as a whole.

Mr. Adams:

That's all.

Cross Examination.

By Mr. Clarke:

Q. Mr. Green, the City of Miami itself does not comprise any one class of community or any one class of occupants, does it?

A. No, sir, it is about every variety of property that you will find in the greater Miami district that is represented in the City of Miami.

Q. You have different races and religions represented in the city?

A. That's right.

Q. In the various sections of the City?

A. That's right, sir.

Q. I was trying to compare it with Coral Gables, sir. Do you think it can be compared with Coral Gables as to the type of person who lives in it?

A. Well, there is possibly certain sections of the city that can be.

Q. As, for example, Coconut Grove?

A. Coconut Grove possibly could; and some of the Northeast Section east of Biscayne Boulevard.

Q. But there are other sections of the city that are largely colored property, for example; is that correct?

A. Well, we have one area of colored population, and a small area of colored population in Coconut Grove.

Q. Do you know how many pieces of improved residential property there is on the tax rolls?

A. Not to an exact figure. We never have had money to compile that sort of thing, but there is approximately 55,000 major buildings. Some of those buildings will be multiple-buildings on one parcel of property; possibly around 40,000 improved parcels of land as described.

Q. Does that include the up-town district?

A. That would include the city as a whole, the entire city.

Q. Do you have any idea how much you would subtract for the up-town section? I mean, how many parcels?

A. Well, this compilation here, the way we make up our districts, of course we have a valuation for Coconut Grove District, and Silver Bluff District, separately; we have to keep all those districts separate.

Q. What I was trying to get at is the average valuation on the domestic property.

A. Well, we never had had the opportunity or the money to compile that.

Q. Would you care to make any guess, with the understanding that you had considerable leeway, as to the average value of the home, the average home, taking the negro property, and good property, and all?

A. Well, I can make this statement, that the average homestead, where we grant homestead exemption, is $2,600.00; now, that includes all the negro property as well as white. I do know that.

Q. Well, that's a cross-section of homes, is it?

A. Well, I guess you would have to possibly call it that way, because all classes are subject to homestead.

Mr. Clarke:

No further questions.

Re-Direct Examination.

By Mr. Adams:

Q. Mr. Green, what is your total assessed valuation in the Coconut Grove district for the year 1939, the gross valuation?

A. For the year 1939, the gross valuation of Coconut Grove was $5,579,510.00; that is real property; and then personal property in the amount of $395,450.00, making a gross total of $5,974,960.00.

Q. Do you have the figure on the total homestead tax exemptions in the Coconut Grove district?

A. Yes, sir. $1,383,220.00.

Q. Are you familiar with the Coconut Grove negro section and the Coral Gables negro section, as to their relative size?

A. The Coconut Grove portion is slightly larger than the Coral Gables Section, I think.

Q. They adjoin, do they not?

A. They adjoin; and it is pretty hard to tell the difference unless you actually know the boundaries in there. I wouldn't say that it was twice as large as the Coral Gables section.

Mr. Adams:

That's all.

Mr. Haycock:

Q. Mr. Green, would you consider the former municipality of Silver Bluff as one that could be compared with Coral Gables as to the type of residences and the population, or so far as the quality of the population is concerned?

A. Generally speaking, I think it would be compared pretty well. There is a great deal of bay-front property in the Silver Bluff district that is represented by nice homes, and some of the back property which, like Coral Gables, has smaller homes.

Mr. Haycock:

No further questions.

By Mr. Adams:

Q. Give the assessed valuations in the Silver Bluff District, too, then.

A. Total real property is $10,109,910.00; personal property, $645,240.00; total gross of $10,755,150.00. Total homesteads, $4,628,230.00.

Mr. Adams:
I believe that's all.

The Master:
Any further questions?

Mr. Clarke:
No, sir; we make the same objection.

The Master:
The same ruling.

(Witness excused.)

655 C. W. TOMLINSON was called as a witness on behalf of the Petitioner, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Adams:

Q. Please state your full name and official connection with the city of Miami Beach.

A. C. W. Tomlinson, City Clerk and Collector.

Q. Mr. Tomlinson, do you know the tax rate in the City of Miami Beach for the year 1939?

A. Yes, I do.

Q. Please give it, separating it as between debt service tax and operating tax.

A. 27 mills, total. I haven't got the separation. I know it is 4 and a fraction for debt service, and the balance for operation.

Q. Have you all refunded your indebtedness?

A. We have refunded portions of our indebtedness on three occasions; practically, two occasions. One in 1933;

and then we picked up all those again in 1936; and we are at present refunding a little group, of $231,000.00, to be closed this year.

Q. In making the assessed valuations, what basis is used of valuing?

A. Of valuing the property?

Q. At 100% of the fair true value, or some discount of that?

A. Well, I think the best way to say that is, or the best way I would say, in determining that, was the opinion of those who come most in contact with values. I know that our assessments are not considered full values by anyone in the real estate field. As a basis, they don't use a direct percentage of value. They aim to assess on a fair, I should say—well, I would speak of it as a fair proportionate value of the property; in other words, the feature is to equalize the assessments as far as possible. Now, its relation to the actual value I know, from the opinion of realty men and my own knowledge, that of our total roll, our actual value must be close to twice that much, although I know that the assessor in making his assessments doesn't use an actual 50% basis, but I do know that the final result that is accepted by the Council at an equalization hearing amounts, in Dollars and Cents, to that.

Q. Now, do you have the figures of the building permits in the City from the beginning of the year 1936?

A. Yes, I have them either by our fiscal year or by calendar year; which would you prefer?

Q. The calendar year would be preferable.

A. For the calendar years, we had, in 1936, $12,526,107.00: 1937, $10,809,508.00; 1938, $7,075,806.00; 1939, $11,406,914.00; and 1940, $15,960,535.00.

Mr. Adams:

You may cross examine.

Cross Examination.

By Mr. Clarke:

Q. What portion of those building permits would you say went into the hotel, or tourist type of hotel or apartment?

A. Oh, a large share of it, because naturally they are the sizeable buildings.

Q. Do you know, or recall, what the building permits on the 40 hotels you built last year was?

A. 42 hotels. Don't miss any of them. 42 hotels amounted to $4,521,700.00. Of course, apartments also run up the same. There were 171 apartments of 1711 units and 92 rooms, $4,266,450.00.

Q. So more than half of your building permits, then, go to apartments and hotels?

A. They did in these last two or three years. A few years back it was in residences.

Q. What is your total debt?

A. $5,644,000.00 at the end of our fiscal year; it is a few thousand under that now.

Mr. Clarke:

That's all.

Mr. Barry:

We renew our motion again.

The Court:

The same ruling.

(Witness excused.)

(Whereupon, the hearing was adjourned to 9:30 A. M. March 4, 1941, to be resumed at the Coral Gables City Hall.)

Thereupon, at 9:30 o'clock A. M., on the 4th day of March, A. D. 1941, the hearing in this cause was resumed, said hearing being held in the City Hall of the City of Coral Gables, and the hearing having been convened, the following proceedings were had:

The Master:
Are we ready to proceed?

Mr. Adams:
Yes, sir, Senator. In the light of the remarks about the two special issues yesterday that you made, I would like to say that the data is in the record for the argument of the equities that might exist as to those two special issues, and we will argue that later. We have checked it to see.

The Master:
That ought to go over to the final hearing I think.

Mr. Adams:
Yes, sir.

658 Thereupon G. N. SHAW was recalled as a witness on behalf of the Petitioner, and being still under oath, further testified as follows:

Direct Examination (Resumed).

By Mr. Adams:
Q. Mr. Shaw, in the bond election in which the freeholders of the City voted upon the January 1, 1937, refunding plan, what was the result of the election as shown on the official records of the City?
A. I have here, Mr. Adams, a copy of the Resolution No. 1649, by which the Commission accepted and re-

corded the returns of that election. It shows a total of 566 votes cast for the proposed refunding, and 179 votes cast against the refunding plan.

Q. Now, when was that election held?

A. On January 25, 1937.

Q. In the June, 1937, election of Commissioners, were any of the commissioners who voted in favor of this refunding plan running for reelection?

Mr. Warren:

I can't see the materiality of that, if the Court please; it is cluttering up the record.

The Master:

I don't see the materiality of that, Mr. Adams.

Mr. Adams:

If the Master please, we think it is material to this extent, that there existed in the Gables at that time and still exists in the Gables, a strong opposition to this refunding plan, and an opposition that is still so active, and coupled with that, opposition in opposition to increased taxes, that we think that is one element of the danger to the City of any possible increase in taxes arising out of the refunding situation that might work a harm to the City and to the creditors, both. It is a part of the psychology of the creditors—

Mr. Clarke:

You mean that the present commission might be defeated at the re-election?

Mr. Adams:

Yes; and a commission go in that would start to cutting assessments and taxes, and what not, as a part of the psychology of the creditor who is supposed to pay.

Mr. Clarke:

Then I object to it on the ground it is not up to the bondholders to perpetuate the present City Commission. I think that is the effect of it. While I have no objection to the people electing whoever they want, I don't think it is our business to help.

Mr. Barry:

I object to it further on the ground that the real fact of whether or not they can pay is a matter of fact and not an assumption. That's what they are arguing now.

The Master:

I will sustain that objection.

Q. Mr. Shaw, turn to the stenographer's record of your testimony at Page 95, and please point out the portion of the transcribed testimony there that is confusing, and make such correction of it as you think is necessary.

A. From the question near the top of Page 95, commencing: "Now, using the 1936 assessment roll valuation", and proceeding on through the first answer on Page 96, I would like to substitute a schedule which I have prepared here which shows the default situation as of January 1, 1937, the amount maturing to June 30, 1937, the amount maturing during the year 1937-38, and the amounts maturing during each of the years 1938-39, 1939-40, and 1940-41, and the millages which would be required, based upon the applicable assessment rolls, being the actual assessment rolls experienced by the City in connection with those years.

Q. Do you have an actual roll for the 1941 fiscal year?

A. We have in the testimony the preliminary roll which was almost exactly the final roll.

Mr. Adams:

We offer this schedule in evidence as Petitioner's Exhibit 47.

Mr. Clarke:

I don't have any objection to the competency of this, if all these figures are taken off some other exhibits.

A. These figures, Mr. Clarke, are taken either from other exhibits or from certified audits of the City.

Mr. Clarke:

Those aren't in evidence?

A. Not as yet, but the figures as to principal maturities have been testified to and appear on this same page.

Mr. Clarke:

And this is assuming nothing was refunded?

A. That is correct, sir.

Q. What is the fiscal year used by the City of Coral Gables?

A. The year commencing July 1st and ending on the following June 30th.

Q. And how long have you used that fiscal year in the financial affairs of the City?

A. Since the inception of the City in 1925.

Q. Do these bond principal amounts shown here include the bonds that were placed in judgment and have not been paid, or acquired by the City?

A. They do not, sir. This statement picks up the condition as of January 1, 1937, and carries it forward. The bonds which were placed in judgment were after that date.

Q. And those bonds are in these figures?

A. The bonds are in those figures, yes, sir, but not as judgments.

Mr. Adams:
I believe I offered this in evidence as Exhibit No. 47.

Mr. Warren:
We object to it for the reason it reflects a condition which no longer exists, and reflects a condition which existed as of January 1, 1937, and not as of the date of the filing of the Petition and not as of the present time.

The Master:
Any further objection?

Mr. Clarke:
No, sir.

The Master:
Objection overruled; the exhibit is admitted.

(Instrument thereupon marked in evidence as Petitioner's Exhibit No. 47.)

Q. Now, Mr. Shaw, please refer to City Exhibit No. 27.
A. I have it before me, Mr. Adams.
Q. Look at the first five lines of Columns "I" and "M". The first line has a zero there, and refers to the fiscal year 1936-37, and the next four lines of "I" showing the millage, First Series, and "M" showing the millage, Second Series. Will you please explain this splitting of the millage in this exhibit?
A. I think it has been previousy explained, Mr. Adams, that the refunding occurred on January 1, 1937, and the six-months requirement for the months from January to June, 1937, were not provided for by any particular and allocated levy. The interest for this period was paid out of funds accruing from the then existing tax roll and previous tax rolls. Commencing in the fiscal year 1937-38,

the levies required by Ordinance 269, as amended by Ordinance 289 were made, and allocated as shown by this Exhibit 27. Certain of the bonds had been reduced to judgment and temporarily removed from the plan, and the levy was reduced from the required six mills by the proportion which those debts bore to the proportion of debts to be refunded. This amounted to .11 mills. In some years we have used .11 mills, and in others a flat .1 mill, chiefly deviating from the second decimal for the purpose of securing as nearly as possible a round number millage. Now, the deviation between the first series millage and second series millage is somewhat difficult to explain, and I have made a prepared statement covering that which I would like to read; it is a little difficult to do extemporaneously; Section 8 of Ordinance 269 provides: "There is hereby directed to be annually levied and collected a separate and special tax at the rate of six mills for each of the fiscal years 1937-38 to 1941-42, inclusive; at the rate of seven mills for each of the fiscal years 1942-43 to 1946-47, inclusive; at the rate of seven and one-half mills for each of the fiscal years 1947-48 to 1956-57, inclusive; and at the rate of eight mills for each of the fiscal years 1957-58 to 1976-77, inclusive." The above provision is for the service of all of the debts to be refunded. The validation proceedings produced a change in the plan to the extent and effect of separating certain of the debts and providing that they should not be serviced from levies on the property exempted from taxation under the Homestead Exemption Amendment. These certain debts were covered by the provisions of Ordinance 289, providing for the issuance of "Second Series" refunding securities in exchange for them, and providing for the separate and special arrangements for the servicing of the Second Series securities. Ordinance 289, Section 5, says: "The minimum tax rates prescribed by Section 8 of Ordinance 269 shall be imposed upon all property *which was*

not exempted by Section 7 Article 10 of the Constitution of Florida, and there shall be imposed upon all homestead property, exempted from taxation by said Section 7 Article 10 of the Constitution, the following minimum rates of taxation in lieu of those prescribed by Section 8 of Ordinance No. 269: Fiscal years 1937-38 to 41-42, inclusive minimum rate, 5.88 mills; 1942-43 to 46-47, inclusive, 6.86 mills; 1947-48 to 56-57, inclusive, 7.35 mills; and 1957-58 to 1976-77, inclusive, 7.84 mills."

To comply with the above, both in spirit and in the matter of tax roll mechanics, would mean that for the year 1941-42, as shown in exhibit 27, the City would levy upon the non-homestead exempt value alone a total of 6 mills. The amount of this value is shown in Column I of that exhibit as $18,476,934. The six mills would produce a levy of $110,861.60. The homestead exempt value consists of the difference between the figure in column "I" and the total value, $25,595,630, in Column "H", which difference would be $7,118,696. This latter "exempt" value would be subject to the 5.88 mills provided for in Section 5 of Ordinance 289, and would result in a levy of $41,857.93. The total of the two levies would be $152,-719.53. The City, in its practices and in Exhibit 27, complies with the spirit and the letter of both Section 8 of Ordinance 269 and Section 5 of Ordinance 289, but for mechanical simplicity handles the mathematics in a different way. Upon the total value in Column "H" the City levies 5.88 mills. This total value includes both the "exempt" and "non-exempt" brackets of value. Upon the "non-exempt" shown in Column "L" the City levies an additional .12 mills. Since this "non-exempt" value has suffered a levy of 5.88 mills under Column "H", and has imposed upon it an additional .12 mills in Column "L", it is subjected to the full levy of 6 mills as required in both Ordinances 269 and 289. Mathematically, the result is the same. The application of the 5.88 mills to the total

value, Column "H", produces a levy of $150,502.30; the .12 mills upon the non-exempt value of Column "L" produces $2,217.23; the total of both levies is $152,719.53, which coincides with the calculation by the other means. The necessity for this method of handling the matter arises from the fact that the first and second series securities are serviced from separate funds, and the levies for them must be segregated. The 5.88 mills laid on all property services the first series; the .12 mills laid only on non-exempt property goes to the second series. The total of interest to be paid and bonds to be retired is represented by adding the totals of Columns "F" and "G", which gives $8,899,323,93. Column "O" shows the total expected levies for these refunding securities as being $12,389,790.52. The difference between these two figures represents the amount of taxes over and above the fixed requirements, which will be allocated to the TPCs, and which are shown in Column "P", totaling $3,990,665.57. Not all of these taxes will be collected within the fiscal year, and, in an endeavor to determine what the TPCs may be expected to receive in cash from current taxes in each year, the amount of current uncollectibility has been estimated in Column "Q", and deducted from the figures of Column "P" to give Column "R".

Q. Now, Mr. Shaw, you were directed at the hearing on the day you testified about Exhibit 30 to prepare a substitute exhibit. That testimony begins on Page 179 of the Record. Have you prepared a substitute exhibit for this Exhibit No. 30?

A. I have, Mr. Adams; (producing same).

Q. Will you please explain it, and the differences between it and the other one?

A. This revised Exhibit 30 shows for each of the fiscal years appearing in the first column, the total amount of bonds and interest previously matured or maturing within those fiscal years, these figures appearing in the second

column. The first year, that of 1940-41, has been divided so as to show the amount matured prior to the beginning of that year, and the amount maturing during the year. The third column shows, based upon the assessed values of Exhibit 22, the millage required for a levy to pay these matured or maturing amounts. The fourth column shows the amounts, including interest, of the existing mandatory spread levies, and which amounts are taken from Exhibit 20; and the fifth column, calculated as described for the third column, shows the millages necessary for levies to pay these items. The sixth column of the schedule shows the total combined millage, being simply the total of those shown in the third and fifth columns. The seventh column of the exhibit shows the total millage if the operations of the City are to be maintained as at present.

Q. Now, what do you add to the total in Column 6 to get 36.02 in Column 7, and the source of that?

A. The millage which is now being levied, in addition to the millage for the refunding issues, and the service of mandatory spread levies, which is 14.84 mills, together with 5.65 mills for the service of the refunding issues, assuming that the debts represented on this exhibit are excluded from the plan and not included in the levies for the plan. This adjustment amounts to .35 mills. It can be determined directly from Exhibit 19, which shows the presently outstanding unrefunded bonds as comprising 3.98% of the total amount to be refunded, and the amount of refundable debt in judgments as 1.84% of the total amount to be refunded, making a total of 5.82%. 5.82% of the six mill levy would be .35. Now, this adjustment varies, of course, as the millage rises under the refunding plan. It would be .41% for the years in which the millage is to be seven; and .44% for the years in which the millage is to be seven and one-half per cent. The last column of the exhibit is based upon a different assumption, that of

the maximum or ceiling tax rate of 22 mills, and shows the millage which will be available for purposes other than the service of these and the refunded debts if the millage is held at a top of 22. I would like to comment further upon this exhibit, Mr. Adams. The exhibit shows for the year 1940-41 a required millage of 15.53 for these particular debts, and a total millage of 36.02 mills for all purposes. The year 1940-41 is drawing to an end, and of necessity this millage would have to apply to the year 1941-42, together with the millage shown here for that year, in as much as the levy would now have to be made in the year 1941-42 and collected and paid out in that latter fiscal year. This, of course, would revise the figures and would make an even steeper tax rate at the beginning. The figures in the following fiscal years are somewhat theoretical, since the imposition of this enormous tax rate in any year would break down collectibility, would interfere with operations and debt service, and would require a spreading which would necessarily increase the subsequent millages. We have no means of determining the extent or time of this effect, so we can offer no exact figures on it.

Mr. Clarke:

Mr. Shaw, that is not true as to Column 5, that there would be a duplication there, is it, because as I understand, you are levying for Column 5 in the current year.

A. No, it would not be true as to Column 5; it would be true as to Columns 1 and 2.

Mr. Clarke:

2 and 3.

A. Columns 2 and 3, yes; and since the major portion of the millages that affects which I have described would still apply.

Mr. Clarke:

Well, I was referring to your statement that the 1941-42 would be a combination of the first two years in Column 6.

A. Perhaps I had better clear that up. If this table was deferred until 1941-42, what would happen would be the carrying forward of the 14.26 mills in Column 3, which would produce in the total millage, if operations are maintained as at present column, for 1941-42, a millage of 37.68.

Mr. Adams:

We offer this Exhibit No. 30-a in lieu of the original Exhibit No. 30 which was offered at the witness' original testimony.

The Master:

Is there any objection to that?—If Not, it is admitted as Exhibit No. 30-a.

(Instrument marked in evidence as Petitioner's Exhibit No. 30-a.)

(By Mr. Adams):

Q. Mr. Shaw, will you look at the Exhibit No. 35 and tell me whether you have had time since the several City Clerks and Tax Collectors and Assessors testified yesterday, to prepare a supplement to this exhibit premised upon the evidence furnished by these various city officials on yesterday?

A. I have not, Mr. Adams. I wanted to go over the record and make it exact. As far as I could determine from the testimony of yesterday, the only change would be in the case of Miami Beach.

Mr. Adams:

The Petitioner reserves the right to examine Mr. Shaw on this point as to Exhibits 35, 38 and 39, and now tenders the witness for cross examination.

Mr. Barry:

If the Court please, on direct examination we have objected to certain events prior to June 5, 1940, when this Petition was filed. Your Honor has admitted that, subject to final ruling, and we will cross examine on those same things subject to the right of withdrawal if Your Honor should hold it incompetent.

The Master:

It is so ordered.

Cross Examination.

By Mr. Barry:

Q. Mr. Shaw, have you the records here of the various payments that you have made on these bonds since the original default on July 1, 1930?

A. I have not those records in detail. I have the audit reports. I would have to analyze these amounts in order to give any detailed testimony as to them.

Q. Well, my question is, such records as you have are available here at this hearing?

A. That's correct, sir.

Q. Mr. Shaw, what is the Coral Gables Development Company?

A. The Coral Gables Development Company is a corporation existing in Miami, whose chief purpose so far as I know it is to handle and liquidate certain lands and taxes.

Q. Has the City of Coral Gables any interest in that corporation?

A. None whatever, sir.

Q. Is it a privately owned corporation?

A. So far as I know.

Q. And the City of Coral Gables has from time to time sold to it various tax claims or tax liens?

A. It has.

Q. Who is Mr. Exselsen?

A. Mr. Exselsen is at present one of the officers of that company.

Q. Is he employed at this time by the City of Coral Gables?

A. He is not.

Q. When was he employed by the City?

A. Commencing approximately in October of 1936. I frankly do not know the exact date of the termination.

Q. He was paid the sum of $80,000.00 and expenses for his services at that time, was he not?

A. That is correct.

Q. And an additional sum was allowed him to buy bonds and make adjustments with, was it not?

A. No sum was allowed him. He bought certain bonds on behalf of the City upon authorizations from the City Commission.

Q. Well, is this statement from your audit report, dated December 21, 1938, correct: "The City received therefor the sum of $396,900.00, of which amount $295,000.00 was placed in a Trustee-Account in the name of Carl L. V. Exselsen, to be expended by him as agent for the City for the purpose of purchasing such outstanding City indebtedness in the form of bonds, bond interest and bond judgments as could not be canceled through the issuance of refunding bonds and tax participation certificates"?

A. That statement is partially correct, sir. It is a statement by the auditor involving not only the records which he was auditing, but perhaps his understanding of the arrangement. As a matter of fact, there was no blanket authority to Mr. Exselsen.

Q. Was there a contract with Mr. Exselsen?

A. There was a contract covering his fee.

Q. Will you produce that, please?

A. I have the contract here, Mr. Barry. (Producing same and handing it to examining counsel.)

Mr. Barry:

May I take time to read this, if Your Honor please? I have never seen it before.

The Master:

Certainly.

(Document examined by counsel.)

Mr. Barry:

I would like to offer this contract between the City of Coral Gables and Carl L. V. Exselsen, dated June 30, 1937, at this time, for identification, it being understood that a copy will be substituted for the original.

(There being no objection, the instrument was marked as Defendant's Exhibit 1 for Identification.)

Q. Mr. Shaw, this refers to a contract dated February 3, 1937, between the City and Edwin H. Barker, et al., a bondholders' protective committee.

A. Yes, sir.

Q. Have you that contract?

A. Not with me; I will have to send downstairs for it.

Q. I wish you would. And while you are on that, there is a deposit agreement dated January 22, 1931, as amended. May we have a copy of that, as well?

A. That's the agreement of what date?

Q. January 22, 1931, as Amended. That's a deposit agreement. And the first was the contract of February 3,

1937. And then I want to get the contract of December 24, 1936; I think that's this right here (exhibiting a printed copy of instrument to the witness).

(Here a short recess was taken to permit the witness to secure the documents called for). (Upon same being produced, they were examined by counsel.)

Mr. Barry:

I now offer for identification Defendant's Exhibit No. 2, being an agreement dated February 3, 1937, between the City of Coral Gables and Edwin H. Barker, et al., and for this a copy is to be substituted.

(There being no objection, the instrument was marked as Defendant's Exhibit No. 2 for Identification).

Mr. Barry:

I offer for identification Defendant's Exhibit No. 3 being "Plan and Agreement for Readjustment and Refunding of Bonds of the City of Coral Gables, dated December 24, 1936.

(There being no objection, the instrument was marked as Defendant's Exhibit No. 3 for Identification.)

Q. Now, Mr. Shaw, you testified that the bonds of Coral Gables went in default on July 1, 1930; is that correct?

A. That is correct, sir.

Q. How many bonds went in default on that date?

A. The major portion of our default on that date, Mr. Barry, was interest. I have already prepared and submitted an exhibit showing the default condition as of the end of each fiscal year. I will refer to that and to the audit report and attempt to say how many bonds it was.—

From the audit report of June 30, 1930, Mr. Barry, I would say that the default in bond principal on that date was $195,000. of the so-called revenue bonds issued July 1, 1929.

Q. Was any interest paid on that date on any of the bonds?

A. It is my recollection that there was on that day a balance in the so-called sinking fund "A" which was for the benefit of the special assessments lien bonds, and I believe that that balance was applied to the interest on those bonds. I would have to more carefully search the records to state that positively.

Q. Now, what bonds were those on which interest was paid?

A. They would have been the bonds of the issue of July 1, 1926.

Q. Was any interest paid on any other bonds except those of July 1, 1926, on that date?

A. Not on that date. That's my recollection.

Q. Now, when was the next payment of any interest made by the City, and on what bonds?

A. To the best of my recollection no further interest was paid upon regular interest maturity dates after July 1, 1930.

Q. Until what date?

A. Until the payment of the interest due July 1, 1937 on the refunding bonds.

Q. Now, if I understand the refunding correctly, that was done as of January 1, 1937, was it not?

A. That is correct.

Q. And how much interest was paid on January 1, 1937, or as of that date, assuming your substitutions were made later? Was any of the interest on the prior bonds picked up and paid as a result of that?

A. I would have to refer to the record, Mr. Barry; I don't recall off-hand.

Q. The general plan, however, did not require the payment of interest that had accrued on or prior to January 1, 1937, did it?

A. The general plan did not.

Q. Now, after your default on July 1, 1930, was there a bondholders' committee formed to take care of the interests of the bondholders?

A. There was.

Q. Who comprised that committee?

A. Edwin H. Barker, Chairman, Sanders Shanks, Jr., and Prentice DeV. Ross.

Q. Did they prepare and have executed a deposit agreement dated January 22, 1931?

A. I assume they did, Mr. Barry. I have a copy of such an agreement which I have given you.

Q. Well, the City did deal with this Committee as a Bondholders' Protective Committee, and as having authority to deal, did they not?

A. It did.

Q. You recognized them as such?

A. We did.

Mr. Barry:

I now offer this Deposit Agreement, or a copy of it, which is Dated, January 22, 1931, as Defendant's Exhibit No. 4 for Identification.

(There being no objection, the instrument was marked as Defendant's Exhibit No. 4, for Identification.)

Q. Mr. Shaw, was any agreement made with a bondholders' protective committee or any individual bondholder between the default on July 1, 1930, and the passage of the first ordinance about the refunding, which was in December, 1936, as I recall it?

A. I believe not, Mr. Barry, except an agreement with the Florida Power & Light Company by which they agreed

to accept a liquidated amount for a contract which was still running.

Q. Now, when this ordinance was passed in December, 1936, had the City bought any bonds for a sinking fund account or acquired bonds in any way for taxes or anything of that sort?

A. It had.

Q. Can you give me the amount of those bonds and from whom they were acquired?

A. I can not, without an analysis. We bought bonds on the open market during certain years of our default, and at other times we accepted bonds in the payment of taxes and assessment liens; to give you the data you have asked would require an analysis of those old accounts.

Q. Can you give me the approximate amount of bonds acquired by the City during that period without being strictly accurate?

A. No, Mr. Barry, because we canceled bonds during all that period. At January 1, 1937, it is my recollection we had only a minor amount of bonds still alive. I would have to go back through the records to determine how many we had bought, and how many canceled, because these audits would not at any one point show that total.

Q. Well, you were buying bonds in the open market during that period, and not attempting to pay either principal or interest; is that correct?

A. We paid some interest.

Q. What interest did you pay? I understood you a while ago to say that the payment that was made on either June 30th or July 1st, 1930, that after that no further interest was paid until July 1, 1937.

A. I think I said that no interest was paid on regular maturity dates; that is, nonscheduled time.

Q. Well, how did you pay it, and on what dates?

A. We paid on varying dates on defaulted interest coupons, commencing in about 1932, and running down to

about the time of our default. Payments were made under the first-come-first-serve policy, which was then, as far as I know, the law of the State.

Q. Was there any attempt made to equalize the payment of interest on the various bonds?

A. You mean as between all bonds outstanding?

Q. Yes, sir.

A. No.

Q. When your adjustment was made as of January 1, 1937, was there any requirement for a given number of coupons to be attached to the bonds which had theretofore matured, or did you accept the bonds in varying amounts of interest?

A. We accepted the bonds in varying amounts of interest, and adjusted the tax participation certificate amount accordingly.

Q. Then some bondholders received cash where other bondholders received tax participation certificates; is that correct?

A. Not as of that date.

Q. But they had formerly received cash, and they received fewer certificates because they had already been paid in cash?

A. Yes. Those bondholders who pressed their claims and seized monies which were on hand and applicable had received cash for their coupons.

Mr. Redfearn:

Just a minute. Did you say "seized"?

A. Read my answer. (Answer read to the witness) May I make that "seized or secured".

Q. What do you mean by creditors who had seized or secured monies applicable?

A. Some few creditors secured money through mandamus suits to require payment; other creditors presented

coupons at times when we had monies on hand for which we had no other allocation and no defense, and those creditors, of course, were in a position to secure payment of their coupons.

Q. How many suits did you have pending on January 1, 1937, including suits which had proceeded to judgment and the judgments were unsettled at that time?

A. I believe that Mr. Adams has it.

Mr. Adams:

It's in one of the exhibits; No. 10 is the exhibit.

Q. Mr. Shaw, referring now to Exhibit 10, which is a statement by Mr. Adams, the City Attorney, they refer to a judgment of Laura A. Tucker of $4,327.50. It is marked "Settled for less than face amount, $5/16/36." Can you tell me how much money was paid to Mrs. Tucker in settlement?

A. I do not have before me, Mr. Barry, the record of any such transaction which occurred prior to January 1, 1937.

Q. Could you get up that information before you conclude here, and supply it?

A. I can.

Q. The next judgment is Rudolph Avenius, $4,680.00. It does not say when it was settled. Have you any record of that?

A. That, I think, was settled prior to January 1, 1937.

Q. Will you attempt to find out what was paid to him and supply it?

A. I will.

Q. Could you state whether those two claims were settled for cash or for new bonds?

A. They were settled for cash.

Q. Have you any record of Edward H. Barket, who had a suit for $2,351,575.00?

A. That suit, Mr. Barry, was withdrawn or dismissed without any payment.

Q. On the exhibit it is "Barket"; isn't that Edwin H. Barker of the bondholders' committee?

A. That is Edwin H. Barker; it is a typographical error in the exhibit.

Q. Leo K. Steiner, $8,280.00. It seems to have been settled 4/28/36; have you any record of that here?

A. No.

Q. Will you attempt to look up that settlement and the number of bonds, if you can?

A. I will.

Q. That also was a settlement for cash, I presume?

A. I believe so. There were no refunding securities issued prior to January 1, 1937.

Q. Frances L. Regan, $50,000.00; it seems to have been adjusted 6/10/36. Have you any record of that?

A. I do have the record of that.

Q. Can you give the bond numbers?

A. Not the bond numbers.

Q. What did she receive?

A. She received $16,790.18 for a total accrued value of $40,690.02.

Q. The amount of the claim as stated here is $50,000.00. Why was that reduced to $40,000 and some odd thousand dollars, as you stated?

A. I can't say as to that, Mr. Barry; the amounts that I have here are the actual amounts of bonds and accrued interest on those claims.

Q. Did she receive anything else of value of any kind, other than the $16,000 odd dollars which you have mentioned?

A. She did not.

Q. What was done with the bonds which she had previously held? Were they taken up and canceled?

A. They were canceled in the judgment.

Q. The next is Rybert Mortgage & Securities Company.

A. Just a moment. Will you strike that last answer. I would like to correct that last answer, as to the Ragan judgment. The Ragan judgment was bought by the City's reserve funds, and was refunded to those reserve funds; it was not bought out of regular operating or debt service funds of the City; that was a purchase rather than a retirement.

Q. Well, were refunding bonds ultimately issued for the amount which was paid to Mrs. Ragan?

A. Such bonds and tax participation certificates were issued to the Trust Fund, just as to any other creditor.

Q. Exactly what amount of bonds and certificates were issued to your fund?

A. $15,000.00 of refunding bonds, and $24,540.00 of tax participation certificates, representing the value of the securities and interest coupons contained in that judgment, as of January 1, 1937.

Q. What was then done by the City of Coral Gables with the $15,000 of bonds? Are they still held?

A. They are still held, to the best of my recollection, by the Trust Fund.

Q. What became of the tax participation certificates? Are they still held?

A. They are still held by the Trust Fund.

Q. Have they been voted as a consenting creditor?

A. They have not.

Q. What is that Trust Fund out of which you took the funds to settle that?

A. That Trust Fund consists of the Employees' Compensation Fund, the Insurance and Depreciation Reserve, and Reserve for Road and Bridge repairs, which receives annually the City's share of the County Road and Bridge millage, and from which is transferred from time to time to the general fund amounts for special and major road and bridge work, and certain other minor balances in the nature of suspense, escrow or trust deposits with the city.

Q. Generally speaking, they are specially allocated funds that are different from your general funds?

A. Entirely, sir.

Q. Passing, then, to the next claim, the Rybert Mortgage & Securities Corporation, $4,950.00.

A. When was that settled?

Q. 5/26/36; marked "settled by payment of past due interest".

A. Settled in '36?

Q. Yes.

A. I don't have that record before me.

Q. Would you include that in the list, if you can?

A. Yes, sir.

Q. The next is Leo K. Steiner, $20,000.00; settled 10/19/37.

A. Settled 10/19/37; is that correct?

Q. Yes.

A. I will simply read the record before me of the transaction, on October 19, 1937, between the City and Rybert Mortgage & Securities Company, which evidently consists of a judgment and other bonds not in judgment. The City paid $66,036.37 for a total then existing value of $143,452.34.

Q. Mr. Shaw, will you get with Mr. Adams, who prepared Exhibit 10, and prepare an exhibit which will show bonds evidenced in each of these claims, whether any coupons are evidenced in each of these claims, any interest on interest, if there be such in the claim, any other amount which the claimant set up in any way, and then the amount which you paid for that, showing whether it was paid in cash, whether it was paid in bonds or anything else of value, or by a foregiveness of taxes, if that was done, or whether you took them in receipt of taxes which were due you? In other words, I want a more or less detailed list of each of the amounts set up on Exhibit 10. Will you file that as soon as you conveniently can?

A. I certainly will, as soon as I can.

Q. One thing further about this exhibit, Mr. Shaw. In the event that new bonds have been issued in connection with a settlement of any of these claims, will you also indicate or not whether or not consents are filed on behalf of those bonds to the refunding plan? Can you do that?

A. Yes, Mr. Barry, I think we can do that.

Q. After the passage of the ordinance in December, 1936, you were required after that to validate the refunding bonds by a procedure in the Florida Courts, were you not?

A. We were.

Q. Now, there was something in that procedure that required the passage of an additional ordinance at a later time, which was passed on the 4th of September, 1937; is that correct?

A. That is correct, sir.

Q. Were any refunding bonds actually printed and issued prior to the passage of that second ordinance?

A. No.

Q. When were the bonds delivered to you and signed, and ready for delivery? I am speaking now of the refunding bonds under your ordinance of September, 1937.

A. I cannot state the exact date. They were delivered to me at The Signature Company in New York following the passage of that Ordinance 289, and immediately before the commencement of exchanges under Ordinance 269 as amended by Ordinance 289.

Q. Well, did you sign the new bonds in New York City?

A. I did.

Q. Did you make any deliveries there?

A. I delivered the bonds there to the Bank of New York & Trust Company, who were acting on behalf of the Bondholders' Protective Committee, and delivered to

them such bonds as applied to the amount of their claims; and the remainder of the bonds were delivered then to the Central Hanover Bank & Trust Company, which was the depositary and exchange agent for the bonds.

Q. Did you at the same time deliver to the two depositaries the tax participation certificates that were required under the plan, or were they delivered separately?

A. They were delivered separately, after being prepared as to the amounts.

Q. Do your records show exchanges with each of the depositors with the bondholders' committee, or did you treat the bondholders' committee as a single entity in making the exchange?

A. In delivering the bonds we treated the Bondholders' Protective Committee as an entity, but in each of the Bondholders' Protective Committee's exchanges, it furnished to us a requisition covering the exact bonds which were used in the individual exchanges, and the tax participation certificates.

Q. Was the same amount of interest past due and unpaid on each of the bonds held by the Bondholders' Protective Committee, or had some of the coupons been previously paid, and varying amounts of interest due on those bonds?

A. That was a transaction which was between the Bondholders' Protective Committee and its depositors. The Bondholders' Protective Committee had detached certain coupons and used them in securing payment of interest monies from the City. At the time of the exchanges, it was necessary for the Committee to distribute to each bondholder, whether or not the committee had used that individual bondholder's coupon, his proper share of the refunding securities. The bondholders' committee and the Bank of New York & Trust Company made that adjustment as between depositors, which did not affect the amount of refunding bonds issued by the City to the

Bondholders' Protective Committee; such refunding bonds and tax participation certificates were issued only for the amount of the old bonds, and interest coupons, to January 1, 1937, and interest on past due bonds to January 1, 1937, as was then surrendered to the City.

Q. What do you mean by interest on past due bonds? I thought that was identical with coupons.

A. It is identical with coupons, but we have always treated it separately because, in the case of the coupons, we have an evidence of debt to be surrendered to us and canceled. In the case of past due bonds, it is simply a calculation at the previous coupon interest rate of the amount following the maturity of the bond, and the maturity of the last coupon, to January 1, 1937.

Q. What you mean is that when the bond matured there were no more coupons, and then you figured interest on it; is that what you are telling me now?

A. Yes, sir; that is it.

Q. Now, when you delivered to the Bank of New York & Trust Company, you delivered $50.00 par of a new bonds for each $100.00 par of the old bonds?

A. That's correct.

Q. And then you delivered tax participation certificates for the amount of coupon interest where there were coupons, and for the amount of actual interest where there were no coupons for the past due bonds?

A. That's correct.

Q. Is that correct?

A. Read that last question to me. (Question above read to the witness). (Continuing): And for the remaining $50.00 on each $100.00 of the principal of the bonds.

Q. Now, if the Bondholders Protective Committee had previously detached coupons from bonds on deposit with them and cashed those coupons, you did not take those coupons into account at all in the settlement?

A. We did not.

Q. But you did, either by prior redemption or redemption at the time, take up each bond and all of the coupons which were pertinent thereto at the time of the issue?

A. Yes.

Q. This resulted, however, by the prior redemption of coupons from the committee, in their receiving a different amount of cash which was paid prior to the refunding than certain others who had not presented any coupons to you, who would take the increase in tax participation certificates, did it not?

A. Yes; and that is true not only of the committee, but of any others who exercised their matured interest coupons through mandamus or claim or presentation for payment.

Q. Now, did the City of Coral Gables directly or indirectly pay to the Bondholders' Protective Committee money, bonds, or anything of value in addition to the refunding bonds and tax participation certificates you have just described?

A. No.

Q. Now, the refunding bonds which were issued at that time are a part of the bonds on which you have filed consents?

A. That is correct, consents not being from the committee, but from the individual holder of the bonds or tax participation certificates.

Q. Now, how many bonds, in principal amount, did you refund with the Committee at that time?

A. The principal amount of old bonds was $4,027,000.00.

Q. That refunding with the committee was made pursuant to this agreement which has been filed for Identification as Defendant's Exhibit No. 2, was it not?

A. That is correct, Mr. Barry.

Q. Now, your other adjustment was made through the Hanover Bank & Trust Company, as depositary?

A. Central Hanover Bank & Trust Company of New York.

Q. What was the principal amount of old bonds which they held at the time of the exchange?

A. I could not say, off-hand, Mr. Barry. Some deposits had been made at the time of the delivery of the bonds to them; I am not sure that my records would show exactly how many deposits had been made at that time.

Q. Do your records show the principal amount of refunding bonds which you delivered to the Central Hanover at that time?

A. Yes. We delivered to the Central Hanover at that time all of the refunding bonds remaining after the delivery of the bonds applicable to the Committee's deposits. The bonds were then held as Trustee, and Exchange Agent, by the Central Hanover Bank & Trust Company, and were issued by them for us.

Q. To make it a little plainer, the bonds delivered to the Bank of New York in principal amount would be $2,000,000?

A. $2,013,500.

Q. $2,013,500; and how many bonds did you deliver to the Central Hanover, then? What was the total issue?

A. The total authorized issue was $4,200,000., of which certain bonds were printed in blank because of the necessity of issuing fractional bonds in some cases.

Q. That would leave, then, $2,186,500. of principal available, after the delivery to the New York Bank?

A. That's correct.

Q. Now, how many bonds did you actually deliver to the Central Hanover?

A. I would have to look that up, Mr. Barry. As I say, some of those were in $500.00 pieces; others were in blank amount bonds for preparation in fractional denominations where the principal amount of floating debt—

Q. I am not concerned with the number of pieces, Mr. Shaw, but with the total. Did the aggregate total of all of those pieces aggregate $2,186,500.?

A. Theoretically, that is the case.
Q. Well, actually what happened?

(Upon the above question being asked, there was an off-the-record discussion had, following which a recess was taken from 12:00 noon to 1:15 P. M., at which time the said discussion was resumed; after the discussion was concluded, the examination of the witness G. N. Shaw was resumed.)

By Mr. Barry:

Q. Mr. Shaw, can you give me the numbers of the refunding bonds that you delivered to the Bank of New York from that record here? You said they ran serially, a while ago.

A. Refunding bonds delivered to the Bank of New York & Trust Company were Numbers 2670 to 6696, both inclusive.

Q. And that totaled $2,013,500.00 of par value?

A. Right.

Q. Now, what coupons were attached to those bonds, maturing what date?

A. Attached to the refunding bonds?

Q. Attached to the refunding bonds.

A. Coupons No. 2, maturing January 1, 1938, and all subsequent coupons.

Q. Was any adjustment made for interest on the refunding bonds from January 1, 1937, to date of delivery?

A. Yes, sir.

Q. How was that paid?

A. Interest at the refunding rate of 2½% per annum that year was paid to each creditor in a check at the time of the exchange.

Q. That would be six months' interest, wouldn't it, because Coupon No. 2 would pick up from July 1, 1937, and mature January 1, 1938?

A. That's right.

Q. And for each $1,000. you gave them a check for $12.50?

A. Yes.

Q. Now, what was the aggregate amount of cash that you paid?

A. For that first six months' interest, do you mean?

Q. Yes, sir.

A. I could not say, off-hand, Mr. Barry, but let me answer you in this way. We have paid that interest payment to each ceditor who has exchanged, and we hold in reserve a similar amount for each outstanding bond which is at present unrefunded.

Mr. Clarke:

Does that apply to those bonds which ultimately might be exchanged for the people who are in the same position as my client, where you have been making a separate levy for them?

A. No, it doesn't, because we consider they have been temporarily excluded from the plan, and their interest has been derived from the special levies made for them.

By Mr. Barry:

Q. How was the money raised to pay the cash for that first six months? By a special levy?

A. No. It came out of the tax levy for that year; the year 1936 tax, applicable to the fiscal year 1936-37. We levied five mills for that year without any particular allocation, but with the understanding that from it was to be paid the first six months' interest on the refunding bonds.

Q. That was to some extent taken care of in the December, 1936, ordinance, the foundation of your refunding?

A. That is correct.

Q. Now, what was the aggregate total of tax participation certificates that you delivered to the Bank of New York & Trust Company? Was that the Bank of New York & Trust Company at that time, or just the Bank of New York?

A. No; it was the Bank of New York & Trust Company at that time; it is now changed to the Bank of New York. $3,293,887.95.

Q. What was the aggregate amount of bonds that were surrendered back to you by the Bank of New York & Trust Company?

A. $4,027,000.00.

Q. What was the aggregate amount of coupons which were surrendered back to you, either attached to bonds or detached therefrom, but matured at the time of surrender?

A. I cannot give you the amount of coupons alone which were surrendered, but can give you the total of the coupons and the interest accrued to January 1, 1937, on past due bonds, which was $1,280,387.95.

Q. There was no distinction made between interest accrued on bonds and coupon interest, in the settlement?

A. None whatever.

Q. To sum up, Mr. Shaw, you sent the Bank of New York & Trust Company the bonds in the amount that you have described, the tax participation certificates in the amount you have just described; now, how did you remit the interest for the first six months that was paid to the bondholders? To the Bank of New York in a lump, or separately to each bondholder?

A. To the Bank of New York & Trust Company in a lump, in the amount of $25,168.75, which is exactly six months' interest upon the $2,013,500.00 of refunding bonds delivered to them, at the rate of two and one-half per cent. per annum.

Q. Now, other than those remittances which I have described in connection with this refunding, was anything

of value paid or transferred in any way at that time to the Committee, to the Bank of New York & Trust Company, or to any holder of these prior bonds moving from the City of Coral Gables?

A. I do not know, Mr. Barry, what was the date of our last remittance to them. In December, I believe, the City made an adjustment with the Committee on an amount which the committee claimed had been previously allocated to it for coupons, but unpaid. My recollection is that that was cleared up in December, but it might not have been; it might have gone over into the following year, but it was not at the time of this exchange. What I mean is, at the time of this exchange, we paid them nothing other than these amounts that I have described.

Q. Now, this later payment to the committee, will you tell us what that was? What they claimed, and how much you paid?

A. I will have to get the record to see.

Q. Can you give me some idea?

A. No, not without going into the record.

Q. After that adjustment with the committee was made, about December, 1937, were any further amounts paid to the committee or any bondholder they represented, or other thing of value transferred?

A. None whatever.

Q. Have you any record—

Mr. Adams:

Pardon me just a second. Was that last payment to the Committee on old coupons in December, 1937, or December, 1936?

A. December, 1936.

Mr. Adams:

You said 1937.

By Mr. Barry:

Q. You said this adjustment was long afterwards, in 1937.

A. No; December, 1936. I said it might have gone over into January in the actual transfer of the funds; that's why I made the reservation, to protect myself.

Q. Let me get this straight. As I understood it, your last bond resolution was not passed until September 4, 1937, and you didn't make any transfers until perhaps October of 1937.

Mr. Adams:

Exchanges.

Q. Yes; exchanges.

A. That's right.

Q. I believe there is some confusion here. The adjustment which you have spoken of with the bondholders' committee actually took place in December, 1936, or January, 1937, or some seven or eight months prior to the exchanges of these bonds; is that correct?

A. Yes, sir.

Q. And after that adjustment, nothing passed to the commitee or any bondholder of value except the refunding bonds, the tax participation certificates, and the check for the interest which had accrued?

A. That is correct, sir, as to the bonds held by the committee.

Q. Mr. Shaw, can you tell me how much money the City of Coral Gables paid to the bondholders' committee from the organization of that committee until the final exchanges of these bonds for the presentation of coupons or for any other reason whatever?

A. I can, Mr. Barry, but not at this time. I will bring that figure in after checking the records.

Q. If you will, make a note and furnish that later, please.

A. Yes, sir.

Q. Can you tell me if anything was paid to the committee or any transfer of value made to it other than in exchange for detached coupons which the committee held?

A. Nothing whatever. For all monies paid to the committee, the City's bonds or coupons were surrendered.

Q. You didn't pay any of the expenses of the committee at all?

A. No, sir.

Q. Now, coming to the Central Hanover, could you give me the amount of—or, the numbers on the refunding bonds delivered to the Central Hanover—the serial numbers?

A. We seem to have delivered to the Central Hanover Bank & Trust Company, bonds Nos. D-1 to D-2669; D-6697 to D-7797; and D-8126 to D-8374. Some of these bonds were later returned to me, and I do not have the details here on that. Not all of these bonds were used by the Central Hanover in exchange.

Q. Were your bonds marked "D" for $500.00, or $1,000.00, principal amount.

A. All of our bonds were issued in $500.00 denominations.

Q. Now, do you know the date that they were delivered to the Central Hanover?

A. The bonds were signed on August 20th and 23rd, 1937, and were delivered to the Central Hanover Bank & Trust Company at once, to be held pending exchanges or further instructions.

Q. Were the tax participation certificates delivered at the same time?

A. They were not.

Q. Were they delivered all at one time, or from time to time?

A. From time to time.

Q. Did you pay the accrued interest for the first six months in one check to the Central Hanover, or from time to time to the bondholders?

A. To the bondholders.

Q. How did the bondholders make their claim to the Central Hanover?

A. By submitting their original bonds and interest coupons.

Q. Was that accompanied by a form letter of transmittal prepared by the City?

A. I assume that it was, in all cases.

Q. You did have such a letter prepared?

A. Such a letter was prepared, but this office did not handle any of those letters.

Q. Was the Central Hanover authorized to make the exchange upon presentation of that letter and the original bond and coupons?

A. It was.

Q. How long was the Central Hanover engaged in making these exchanges? What period of time?

A. I would say approximately one year, although the greatest number of the exchanges were made within a period of a few months.

Q. Now, the Central Hanover would deliver to each recognized bond claimant for a Thousand Dollar Bond, a refunding bond in the amount of $500.00, with a coupon attached thereto maturing January 1, 1938, and each six months thereafter during the life of that bond, and tax participation certificates for the difference of the face amount of the bond and all coupons in reference to that bond or other bonds, if such were filed, and the interest for the first six months on the refunding bond; is that correct?

A. Yes, sir.

Q. Do you know of any instance in which the Central Hanover Bank made a different adjustment with any claimant, meaning by that a bondholder claimant?

A. I do not.

Q. Was any such settlement authorized by the City?

A. I do not recall any deviations authorized to the Central Hanover Bank & Trust Company.

Q. You, of course, paid both of the banks a fee for handling the refunding for you?

A. No. The bondholders' committee paid the fee of the Bank of New York and Trust Company; we paid the fee of the Central Hanover Bank & Trust Company.

Q. When did the Central Hanover return to you the unused refunding bonds and terminate their connection with the matter?

A. I wrote the Central Hanover a letter on August 4, 1939, asking for the return of any unissued bonds, and stating: "In future, if any bonds are handled through your bank, we will send them to you together with the tax participation certificates". The bonds were actually received in due course, and as quickly as the mails could handle them after that letter.

Q. Had the Central Hanover returned bonds to you prior to that time and from time to time for direct settlements by the City?

A. It is entirely possible that they may have, although I cannot say definitely. In such cases, we would have requested certain specific bonds to be forwarded to us.

Q. When these bonds were returned, did that fully terminate the connection of the Central Hanover, or did they perform services for you after that time?

A. They have performed services in the same capacity since that time. Bonds have been submitted to them for exchange, and we, upon their request, have forwarded the proper refunding bonds and tax participation certificates to enable them to make the exchanges.

Q. Since the return of those bonds, and in these later transactions, was there any deviation from the 50% bonds and the TPCs, and the check for the first six months' interest? In other words, was there anything more paid to the holder of any bond in these later transactions?

A. No, sir.

Q. During the time that your bonds, and I mean refunding bonds, were in the hands of the Bank of New York and the Central Hanover, did the City of Coral Gables itself, through its own officials or through any other agent, effect any exchanges?

A. Yes.

Q. Where did you get the bonds that you used to make such exchanges?

A. There was not delivered to either of those exchange agencies the bonds and tax participation certificates representing the second series obligations, and I believe some of the indebtedness items, I mean, judgments and notes which applied to the first series refunding securities; those refunding bonds and tax participation certificates were brought here, and we, ourselves, made the exchanges.

Q. I assume, from the date of the signing in New York, that they would have gotten here around the First of September, 1937; is that possibly correct?

A. I believe that's about right.

Q. Mr. Shaw, you have laid before us your Refunding Settlement Register, and I wish to ask you about certain transactions reflected therein. The first one is a settlement with Carl L. V. Exselsen, which went through the Central Hanover Bank & Trust Company. Now, I will ask you, what was the principal amount of bonds that were refunded there?

A. $31,000.00.

Q. And the unpaid coupons?

A. $10,770.00.

Q. And the accrued interest after maturity?

A. $6,780.00.

Q. And for that you issued bonds in the amount of $15.500.00. and tax participation certificates in the amount of $33,050.00?

A. That's correct, sir.

Q. Mr. Exselsen was, at the time of this transfer, in the employ of the City?

A. He was.

Q. Now, where did these original bonds come from?

A. From Avenius, Thomas Pesik, and Farson, Son & Company.

Q. Now, did Mr. Exselsen buy those bonds from the original holders?

A. Mr. Exselsen negotiated as agent for the City in the settlement and purchase of that judgment, made the transaction in his own name, and surrendered to the City the securities involved.

Q. Well, what was issued by the City in exchange for the securities surrendered by Mr. Exselsen?

A. We paid to Avenuis, Pesik, and Farson, Son & Company, $23,600.00, and issued to them $7,810.00 of tax participation certificates.

Q. And for that they surrendered the $31,000.00 principal amount of bonds on which there was $10,770.00 represented by coupons, and $6,780.00 accrued interest? Is that correct?

A. That is correct; although that is the value as of January 1, 1937, the refunding date. The amount of the claim which they settled was probably considerably greater than that, because it included proved up interest upon interest.

Q. What was the actual date of that settlement?

A. I do not have it here, Mr. Barry; I would have to get it from other sources.—After checking my records, I find that date to be March 27, 1937.

Q. Now, at that time, had not the City of Coral Gables advanced approximately $300,000. to Mr. Exselsen to make these trades?

A. No, sir.

Q. How much was standing in the name of Mr. Exselsen, as Agent for the City, at that time?

A. Nothing. We furnished Mr. Exselsen with the funds with which to make this deal, and furnished him with funds in the amount I have stated.

Q. When was this fund of $285,074.71 put in Mr. Exselsen's name, as agent?

A. Very shortly after October 11, 1937.

Q. And you think the trade with Avenius, and others, was before that date?

A. Long prior to that date.

Q. And the City put out its money to make that trade, which was carried through in the name of Mr. Exselsen?

A. Temporarily in the name of Mr. Exselsen.

Q. Now, the new bonds that were issued other than the $7,810.00 of tax participation certificates that were issued to Farson, Son & Company, what became of those bonds?

A. They came back to the City.

Q. How did they come back to the City?

A. Through Mr. Exselsen, through this transaction.

Q. Where are the bonds now? Are they outstanding?

A. That I could not say, without checking the record. They are either canceled or in the City's hands.

Q. I notice in pencil on this page of the ledger the words "Trust Fund".

A. That is correct, sir. That transaction was handled as an investment of this trust fund of which I have previously spoken.

Q. Have you a copy of the Agreement, dated March 27, 1937, pursuant to which this transaction was handled, which is referred to on this page?

A. I don't believe such an agreement was ever entered into.

Q. Why would the following appear upon this page, then: "Note: Under terms of Section "Fourth" of Agreement dated March 27, 1937, between Carl L. V. Exselsen, Rudolph Avenius, Thomas Pesik and Farson, Son & Co., 60% of the Tax Participation Certificates issued in exchange for the items starred above ($6,240 plus $6,780, or $13,020) were registered on Oct. 1, 1937 in the name of

Farson, Son & Co., being"—and then follows a description of tax participation certificates totaling $7,810.00.

A. I probably misunderstood your question, Mr. Barry. I do not have a copy of that agreement, and do not intend to deny its existence. That, as is shown, was an agreement between Exselsen and the others named. Exselsen in turn complied with the City's arrangement with him, which was not in the form of an agreement as to that particular item.

Q. Well, in this particular settlement none of the formulas set out in your two ordinances were followed, but these people were paid in cash with the City's money, and a certain amount of tax participation certificates; is that not true?

A. The formulas were carried out as to the securities and interest thereon which were in that claim. What happened was that the City invested a part of its trust fund monies in that claim, and then under the agreement by which the claim had been settled, issued the claimants a portion of the tax participation certificates and held the balance in its own trust funds, as representing the investment.

Q. Well, the point I'm making, the original bondholder got $23,000.00 in cash, and approximately $7,000.00 in tax participation certificates, did he not?

A. Yes, sir.

Q. And that's not according to the plan of readjustment that you had.

A. No; and by the same token, Fiduciary Council, Inc. has received some $50,000.00 upon a similar claim which is not in accordance with the formulas.

Q. We will certainly bring that out, with pleasure, sir. Now, the City wound up with part of these new securities. They received, I take it, the $15,500.00 of principal amount of bonds, but they did not receive all of the tax participation certificates which are referred to here, did they?

A. No.

Q. And that again was not in accordance with the formula?

A. No, that was not in accordance with the formula.

Q. On the next page of this register is another trade with Mr. Exselsen regarding a Thousand Dollar bond. How was that trade handled, Mr. Shaw, if you know?

A. Mr. Exselsen bought the old security, refunded it, and surrendered the refunding securities to the City.

(Note: At this juncture of the Proceedings, Mr. W. Terry Gibson, counsel for Fiduciary Council, Inc., and others, arrived at the hearing.)

Q. What did the City do with them? Cancel them, or not?

A. They may have been canceled.

Q. What did Mr. Exselsen pay for them to the original owner?

A. I would have to check further into the records, Mr. Barry; I couldn't say.

Q. Did he use the City's money for that payment?,

A. I assume that he did, since the City received the securities.

Q. The next two pages of the register put simply "City of Coral Gables" as the party with whom the exchange was made. Where did you get the bonds to put in and exchange with yourself, Mr. Shaw?

A. We bought them.

Q. Through Mr. Exselsen?

A. He may have arranged it. There is one case there where the sheet shows it was bought from Lockwood & Simms, and another from A. B. Morrison.

Q. Well, when were these exchanges made, approximately? During 1937?

A. Approximately, yes. These sheets do not carry dates. I will have to run that down through the books.

Q. Why was the City buying these bonds and exchanging with itself, at that time, when they had the refunding plan outstanding?

A. The City was obligated to use the proceeds of its delinquent assets for the purchase of its own obligations, and it was so required by the Ordinance 269. The City was following out that requirement.

Mr. Clarke:

Excuse me just a minute. Will you let me ask him a question?

Mr. Barry:

Certainly.

By Mr. Clarke:

Q. Doesn't Ordinance 269 require you to buy them and cancel them, and not issue new bonds for them?

A. Under certain conditions.

Q. Well, state what conditions under the ordinance you are entitled to buy them and issue new—and exchange them for new securities.

A. Any securities bought out of funds not applicable to the 1-1-37 issues may be held for the City's investment and enjoyment.

Q. Well, that's not required by the ordinance, though, is it? Isn't that required by some other policy of the City?

A. No, sir; that's specified in the Ordinance.

Mr. Clarke:

All right.

By Mr. Barry:

Q. Mr. Shaw, certainly your ordinance does not require you to use any Trust Fund in which you can carry

your own bonds, for the purchase of those bonds, does it?

A. No, but the City has the right to invest its trust funds.

Q. I agree to that; but they are not required to, and you do not so insist?

A. We are not required to, no, sir.

Q. And these two trades that I have just mentioned do not show they were made for that trust fund, do they? Don't they show they are from general funds?

A. There is nothing there which indicates. I assume that they were purchased from the proceeds of the sale of our delinquent assets.

Q. Who chose the bonds that were to be purchased?

A. That would be difficult to answer, Mr. Barry. At that time Mr. Exselsen was acting as the City's agent, and he would refer certain matters to the City Commission and secure authority and proceed.

Q. Then if he wanted to favor one man over another in the purchase of bonds, he was at thorough liberty to do it, under your plan?

A. I would not put it that strongly, no, sir.

Q. Well, what limitation was there on it, Mr. Shaw?

A. The approval of the City Commission.

Q. And there was no limitation on their freedom of action in approving, that you know of?

A. I will refer you to the City Attorney as to that matter.

Q. Doesn't that ordinance, when you purchase some delinquent assets, require the cancellation of the bonds? Mr. Shaw, was that contained in Ordinance 269 or 289?

A. Ordinance 269.

Q. Will you find the section you are referring to?

A. Section 19 of that Ordinance says: "The City may acquire for its own account with any monies other than monies in the Issue of January 1, 1937 Fund, the Sink-

ing Fund, the Tax Participation Fund or the $500,000. Fund provided for by Section 12 hereof or required to be paid into such funds hereunder, Refunding Bonds or Tax Participation Certificates authorized hereby and upon so acquiring such bonds or Certificates, may hold the same for its own use and benefit."

Q. You told us that there was a mandatory section that required this to be done; and doesn't this read "The City may acquire"?

A. I said that the City was required by the refunding ordinance to purchase for this cancellation fund.

Q. Show me where that requirement is. That's what I want to see.

A. Section 12 of that Ordinance.

Q. I will ask you if the last two lines of Section 12 are not as follows: "All refunding Bonds so purchased or redeemed by the City under the terms of this Section 12 shall be promptly cancelled"?

A. The last two lines appear as such.

Q. Mr. Shaw, will you please explain why you have not canceled these bonds acquired by the City under that section?

A. The same Section 12, in the second paragraph, says: "The City shall be under no obligation to apply to the purchase of Refunding Bonds any net proceeds in any manner realized from the liquidation of the above described delinquent taxes and other assets during the calendar year 1937". Under that sentence we would have been at liberty to use the monies so acquired during the calendar year 1937 for the pavement of streets, payment of city operating expenses, or any other item within the power of the Commission. We elected to buy these bonds with it. I have been advised that that voluntary election removes the mandatory clause for the cancellation of the bonds.

Q. Mr. Shaw, I don't want to fence with you, but this line of questioning started on your statement that you were required by the bond ordinance to invest these funds in the purchase of these bonds that I am asking you about. Now you are changing that statement, and saying it is voluntary, and for that reason the ordinance does not apply to it. Now take one or the other, and tell me which it is.

A. My answer was without due thought, perhaps—my previous answer. I have now given you the answer. We are required, on all funds received after January 1, 1938, from the sale of our delinquent assets, to apply a certain proportion of them to the purchase of obligations for this cancellation schedule. Monies received prior to January 1, 1938, were exempted from that provision. We elected to use those monies for that purpose, to provide ourselves with the securities to be canceled in accordance with the schedule.

Q. If I get your answer correctly now, that during 1937, while your refunding plan was attempted to be put into effect, and while certain of your bondholders were making demands against your City, the City Commission, or whoever was in charge, elected to make trades with various individuals, paying them cash for their bonds, which were taken into the assets of the City uncanceled; is that correct?

A. I think that statement is correct.

Q. Now, that applies to the sheet here—these sheets are not numbered—which shows $2,000. of face amount of bonds, and the next sheet in Mr. Exselsen's name showing $1,000. of bonds—

The Master:

Just a minute, Mr. Barry. In describing "this sheet", will you say sheet of what?

Mr. Barry:

I started out—this is the refunding settlement register.

The Master:

I understand that, but I would like the record to show it.

Q. I am referring to this sheet, again referring to the Refunding Settlement Register; and now here is another trade involving $3,000.00 of bonds in the name of Mr. Exselsen, as agent, but underneath it, "M. Blair Cockran, owner"; would that indicate that Mr. Cockran's bonds were purchased?

A. That would so indicate.

Q. I take the next sheet of the same Register, and again Mr. Exselsen is agent, but in parentheses: "Craig-Allen & Co.," involving $12,000.00. Would that indicate you purchased $12,000. of bonds, coupons, and so forth, from Craig-Allen & Company?

A. That would so indicate.

Q. Now, what price did the City pay for these various bonds? Have you that information?

A. Yes, sir.

Q. Will you include that in the schedule that you are going to file tomorrow, so indicating that we can identify it with the various sheets of this register I am referring to?

A. I will. I might say on that last case that you have mentioned, Craig-Allen & Company, I have that before me. The City paid $4,800.00 for the $12,000. of bonds, and $5,640.00 of accrued interest.

Q. And the City issued to itself new refunding bonds and tax participation certificates, did it not?

A. It did.

Q. What did it do with those bonds and certificates, Mr. Shaw?

A. Placed them in this fund to provide for the cancellation schedule of the refunding bonds, and held the tax participation certificates for its own use.

Q. Now, if I understand you right, the ordinance, under Section 12, makes it mandatory to use certain funds for the year 1937 for the payment and retirement of bonds, and you accumulated bonds at various prices during the year 1937, and took them out of your own account and reimbursed yourself from this other fund during succeeding years?

A. No, we did not reimburse ourselves.

Q. Do you mean that since 1937 that you have canceled these refunding bonds without anything going into your treasury?

A. We have, such of them as have been canceled.

Q. How many are uncanceled?

A. We acquired approximately $460,000. of bonds, of which we have canceled, off-hand, slightly in excess of $150,000.

Q. What is the reason that the remaining bonds are not canceled?

A. I read you a moment ago, and gave you, the three portions of the ordinance considered applicable, and gave you the reasons for that as they have been interpreted to me and are interpreted by me.

Q. I may be in error, but I understood you to say that you were not required to purchase these in 1937, but voluntarily elected to purchase them so you would have them for cancellation in succeeding years.

A. That is correct, sir.

Q. Well, this is a succeeding year, and why have they not been canceled now?

A. Any which are due to have been canceled in accordance with that schedule have been canceled.

Q. Well, what do you mean, "due to be canceled"?

A. In accordance with the amount—the annual amounts set forth in Section 12, I believe, of Ordinance 269.

Q. Well, do I understand that when you acquire money from the sale of delinquent assets you cancel an equivalent amount of these bonds?

A. No, sir; we cancel these bonds in accordance with the schedule provided by Section 12, of the Ordinance. If you will refer, Mr. Berry, to Exhibit 27, it will show that in the year 1937-38 we canceled $45,000. of the bonds; in the year 1938-39 we canceled $48,246.58 of the bonds; and in the year 1939-40 we canceled $50,952.40 of the bonds. There is scheduled for cancellation this year, $51,000. of the bonds.

Q. Section 12 reads: "The City further covenants and agrees, particularly in consideration of the waiver and relinquishment by the creditors of the City of all right to participate in the proceeds of delinquent tax assets of the City covering any and all claims representing delinquent taxes and/or special assessments imposed prior to January 1, 1936 and/or Tax Certificates, Tax Deeds or other assets now or hereafter derived therefrom, to apply to the purchase of Refunding Bonds at less than their par value with accrued interest, whether in the open market at the lowest price obtainable or in any other manner approved by the City Commission, the following cash sums or their equivalent arising out of the liquidation of said delinquent tax claims or otherwise". Now, that reads, to me, a plain mandate to apply to the purchase of refunding bonds. Now, do you purchase these bonds from yourself?

A. No, sir.

Q. Then you do not apply these credits coming from delinquent assets to the purchase of bonds, or do you?

A. Well, we have received no such monies since 1937.

Q. Then why do you say that you are required to retire these bonds, when you received no funds since 1937, and you say the ordinance does not apply to funds received during that year?

A. The purpose of that provision was to retire $500,000. of the bonds within the first ten years of the plan, and before the operation of the sinking fund.

Q. Now, Mr. Shaw, to be fair about it, isn't it a fact that you sold all these delinquent assets to Mr. Exselsen in 1937, pursuant to this contract?

A. No, sir; we sold those assets to the Coral Gables Development Company, with which, at that time, Mr. Exselsen was not connected so far as I know.

Q. Well, you did sell all of the assets that you contracted to use in this ordinance in future years?

A. We did.

Q. And therefore you have got nothing after 1937 to use for that purpose?

A. That is correct.

Q. And you did, however, use those assets voluntarily to buy bonds when you could buy them cheap at that time?

A. That is correct.

Q. And you bought those bonds who would not elect to refund, didn't you?

A. We bought not only those; we bought some of the refunding bonds with those same assets, or proceeds of them.

Q. But this ordinance, according to the interpretation you have given it, is not an authority for using the proceeds of that money to purchase either of those series of bonds, is it? It is voluntary on your part?

A. It is certainly an authority, but it is not a mandate, as to funds received during 1937.

Q. Well, do you claim that you have purchased those bonds pursuant to Section 12 of that Ordinance?

A. We claim that we have purchased them voluntarily in anticipation of Section 12 of that Ordinance, and are holding them to meet the cancellation schedule required thereby.

Q. Now, the contract with Mr. Exselsen states that he was engaged for eleven months prior to that in working for the City of Coral Gables. What services did he perform?

A. Mr. Exselsen negotiated certain of the exchanges; he was a party to the negotiations of the—to the drafting and the negotiation of the refunding plan; he acted as agent, as you have previously brought out, in the purchase of certain of the City's obligations; and he arranged and consummated the sale of the delinquent tax assets; he acted as associate counsel for the City in the validation proceedings.

Q. Is he a member of the Florida Bar?

A. He is.

Q. Was he a member at that time?

A. I believe he was not; I am not sure of the date when he was admitted.

Q. Now, what further services did he perform after this contract, which is marked for identification here as Defendant's Exhibit 1?

A. With the exception of the connection with the validation proceedings and the connection with the drafting of the plan, and the original negotiations thereon, I believe a part of all the activities I have mentioned were performed after the date of this agreement.

Q. When did Mr. Exselsen's services to the City terminate?

A. I will have to get that from the record, Mr. Barry, as to the date of that termination. I don't know it offhand. I might say that on May 8, 1938, Mr. Exselsen made an accounting of the City business that he had transacted, and paid into the City and residue of funds then in his hands, as agent, and at about the same date the City paid the balance of Mr. Exselsen's fee, I believe. The termination of his connection with the City is, other than that, not evidenced by any instrument.

Q. Pursuant to that contract with Mr. Exselsen you sold to the Coral Gables Development Company tax sales certificates and other delinquent assets of the face amount of $696,773.18 for the amount of $396,900.00 did you not?

A. That is correct.

Q. These tax sales certificates in the amount of $60,-785.87, were they sold, likewise?

A. They were sold likewise, but not as a part of that wholesale transaction.

Q. Who were they sold to?

A. To the Coral Gables Development Company, but for full face amount; for the exact amount of the liens.

Q. And they actually paid you $457,691.01 for the two items?

A. That is correct.

Q. For the sake of the record, the first figure given in this audit, for this 1936-37 tax sales certificates, is $60,-785.87, and the amount sold was $60,791.01, a difference of a few dollars; why is that?

A. There was a slight adjustment on account of certificates which had been redeemed—well, I believe this is the explanation, or in part the explanation—it was on certificates which had been redeemed while this transaction was in progress.

Q. Now, how did they pay that amount of $457,000.00?

A. In cash.

Q. And you immediately put how much of that to Mr. Exselsen's account, as agent?

A. $295,000.00.

Q. Now, this shows in his disbursements that he spent $157,389.31 for bond judgments. Can you give us the detail of that, Mr. Shaw?

A. The detail of that will be given you in this other statement for which you previously asked.

Q. Did Mr. Exselsen use his own judgment as to which bonds and which claims he settled?

A. He made no transactions without referring the matter to the City Commission.

Mr. Clarke:

Mr. Shaw, if that's the case, will you bring the records of the City Commission to show each one of the transactions when you bring your schedule in? As you go through them, you can just mark the record.

A. I'm afraid that that will not be possible, because those matters were not always authorized in formal meetings of the Commission. Many of those were transacted in conference at the time.

By Mr. Barry:

Q. I gather from that that after the contract with Mr. Exselsen, he would simply informally discuss what he proposed to do, with the Commission, and if it was agreeable, he would go through with it?

A. He would be authorized, yes, sir.

Q. When you were putting this refunding and adjustment plan into effect, how many consents, or what gross amount of bonds had to be represented as consenting before you declared the plan in effect, and agreed to issue the refunding bonds?

A. It was agreed, and was stipulated by the deposit agreement, Defendant's Exhibit 3 for Identification, that no exchanges would be made until an amount of not less than 90% of the outstanding debts had been consented.

Q. Without the claims that were bought by Exselsen, totaling something over $600,000., would you have had the necessary 90%?

A. I believe we would, sir.

Q. Were these purchases made by him purchased during the refunding, or after it was completed and put into effect?

A. The first transaction by Mr. Exselsen was on October 17—no, 18th, 1937.

Mr. Clarke:

To clear that up, you mean the first transaction out of this $295,000.?

A. That's right.

Q. Mr. Shaw, referring to the audit of December 21, 1938, doesn't that show that Mr. Exselsen purchased in round figures $157,000.00, $320,000.00, and $97,000.00 of claims?

A. Yes, sir.

Q. Were they then put in the refunding plan and voted for it as part of the refunding?

A. No, sir, they were not voted in the refunding.

Q. They total, roughly, $574,000.00, don't they, or $575,000.00?

A. Right; $575,000.00, approximately.

Q. And roughly, you have got $320,000. outstanding unrefunded bonds now?

A. That's correct, sir.

Q. That makes a total of $894,000.00 and some odd?

A. That is correct, sir.

Q. And that's more than 10% of the amount of your indebtedness at that time, isn't it?

A. No, sir.

Q. What was your indebtedness at that time?

A. $11,000,000. and some odd thousand dollars; $11,231,000.00, I believe.

Q. I was taking into account that you were refunding $8,389,000.00, roughly, of bonds in this refunding plan, and it was of that figure that you wanted your 90%. Am I in error in that?

A. Then your question was in error, because the $575,000. includes two items of interest, $97,885.00, of accrued interest on the bonds in the principal amount of $320,000.00; and there was also, as interest in the judgments, not only the interest that might have been counted in the refunding, but also those judgments contained interest upon past due interest.

(At this juncture of the proceedings, after discussion off the record, a recess was taken at 3:45 P. M., until the following morning, March 5, 1941, at 10:00 A. M., to be resumed at the City Hall of the City of Coral Gables.)

Thereupon, at 10:00 o'clock A. M., on the 5th day of March, A. D. 1941, the hearing in this cause was resumed, said hearing being continued at the City Hall of the City of Coral Gables, and the hearing having been convened, the following proceedings were had:

726 G. N. SHAW was returned to the stand as a witness on behalf of the Petitioner, and being still under oath, further testified as follows:

Cross Examination (Continued).

By Mr. Barry:

Q. Mr. Shaw, referring again to Exhibit No. 10, the statement of Mr. Adams regarding litigation against the City of Coral Gables, have you now the information which I inquired about on yesterday?

A. I have, Mr. Barry.

Q. The first settlement is Laura A. Tucker, $4,327.50, settled 5-15-36. What did Mrs. Tucker receive at that time.

A. $3,233.20.

Q. That is all that she received?

A. That is all.

Q. Now, the next is the case of Avenius, of $4,680.00. I believe that was later consolidated with another suit, and that not settled independently.

A. That is correct.

Q. The next is the Barker suit, which I understand was dismissed.

A. It was.

Q. The next is the case of Leo K. Steiner, of $8,280.00. What did he receive?

A. $8,280.00. Steiner's suit caught funds in the bank sufficient to pay.

Mr. Adams:

May I suggest you show the dates of those payments?

Mr. Barry:

That date was 4-28-36.

A. That's correct.

Q. The next is the Rybert Mortgage & Securities Corporation, $4,950.00, settled 5-26-36; what did they receive?

A. $4,950.00.

Q. That was another 100% settlement?

A. Correct. That was a case, also, where sufficient funds were in the bank at the time of the writ.

Q. A second settlement with Leo K. Steiner of $20,000.00 which was settled 10-19-37; what did he receive for that?

A. On October 19th, 1937, we settled a number of claims by Mr. Steiner, with the total then value of $70,224.79, for the sum of $34,502.00, in cash. This judgment is included—the judgment to which you referred is included in this transaction.

Mr. Adams:

Was there another judgment included in that?

A. On my schedules here I have them all marked "judgments".

Mr. Adams:

No. 2418 on the next page was, I think, included.

A. That's right.

By Mr. Barry:

Q. Mr. Shaw, please break that down and show exactly what the claims asserted by Mr. Steiner were which you settled for $34,000.00.

A. Those claims included three items of principal of bonds, namely, $11,000, $2,000.00, and $41,000. The first two items appear on my memoranda as being in judgment, and the last item as being bonds. The interest in the form of coupons was $2,370.00, and $9,780.00 in the first and second judgments, respectively. Past due interest other than coupons, $630.00. Those are the amounts to January 1, 1937, the date of the refunding. The subsequent interest is $1,177.11, $292.91 and $1,974.77.

Mr. Clarke:

Is that interest on interest, Mr. Shaw?

A. No, that is not interest on interest.

Mr. Clarke:

Is it interest on the judgment?

A. No, that is the straight bond interest without figuring interest on interest.

By Mr. Barry:

Q. The next is the Rybert Mortgage & Securities Corporation, $50,000.00, settled 10-19-37. What did they receive?

A. Again we have a case in which two items were included in one settlement. The Judgment to which you refer seems to have been, without considering interest on interest or costs, $35,182.33. Other claims included in the settlement totalled $108,270.01, making a total of $143,-452.34, for which was paid $66,036.37.

Mr. Adams:

To help you a second there, were the two suits by Rybert Mortgage & Securities Corporation on Exhibit No.

10 as No. 16863 and No. 16688, progressed to judgment, or were the securities included in that settlement?

A. It is my recollection that the securities in those suits were included in this settlement, and that those suits were not further prosecuted.

Q. Does that also include the Circuit Court suit 16863 for $6,780.00?

A. I'm sure it did.

Q. Then we will not ask further questions about those, as having been answered in the one answer. Next is C. J. Root, $40,000.00, writ issued for tax levy 8-16-37. What was done with that?

A. No cash settlement was made of the C. J. Root suit. The tax levy writ was issued, and is still in force. An arrangement was made between Mr. Exselsen and Root whereby certain other claims not in that judgment were included under the terms of the writ, and the writ was somewhat modified as to interest rate and number of years. The details have already been shown, I believe, in the previous documents in the case. If not, I will give them here.

Q. For my purposes, without interrupting, I think we can include this. Mr. Shaw, if I understand the Root situation correctly, his claim was allowed and you are collecting special taxes under an agreed order which are being paid over to Mr. Root from time to time in satisfaction of this claim?

A. I would not say that his claim was allowed; I would say it was accepted.

Mr. Adams:

May I object to that, Your Honor; that's an interpretation of the legal instruments that are in the record that Mr. Shaw, of course, is hesitant about making.

The Master:

I think the record is full on that. I sustain that objection.

Q. Without interpreting, then, Mr. Shaw, the testimony has been heretofore put in the record regarding that in full, has it not?

A. Yes, sir.

Q. And that's the same claim?

A. Yes, sir; that's right.

Q. The next claim is W. J. Noel, $25,000.00; writ issued for tax levy 10-5-37. What is the situation with that claim?

A. That writ is still in force.

Q. Did that writ order that claim paid in full?

A. In full, over a spread of several years.

Q. The next is Mr. Thies, of $100,000.00; adjusted and settled 10-28-37.

A. That was adjusted by the City for the sum of $27,500.00.

Q. That claim of Mr. Thies involved just what? What did he file with the City?

A. The amounts covered by the settlement were $40,000.00 of bonds, $13,200.00 of past due interest to January 1, 1937, and $2,064.25 of subsequent past due interest, making a total of $55,264.25.

Q. That settlement was, then, approximately 50% in cash, was it not?

A. Approximately 50% in cash, yes, sir.

Q. And what happened to the rest of the claim of $100,000. Was that disallowed?

A. That I do not know, from the records before me, Mr. Barry.

Q. Mr. Shaw, your books of the City do not reflect any liability except that which you have detailed, and on which the settlement was based; isn't that right?

A. That is correct.

Q. The next is G. E. Vallette for $12,000; writ for tax levy, 1-23-39. Please tell us about that.

A. That writ is also still in force.

Q. What was the claim, as appeared on the City's record, that was sustained for Mr. Vallette?

A. Bond coupons, $1,350.00; interest on past due bonds, $862.50; interest on past due interest, $411.39; and principal of bonds, $6,000.00; making a total of $8,646.37.

Q. Have you any record of any claim by Mr. Vallette in excess of those amounts you have detailed?

A. No.

Q. The next is Mr. Leo K. Steiner, $11,872.14, adjusted and settled 10-10-37.

A. That, I think, should be October 19th, and is included in the three Steiner items I have previously described.—Am I not correct, Mr. Adams?

Mr. Adams:

Yes.

Q. The next is Helen O'Connell, $50,000.00; adjusted and settled 10-18-37.

A. That was a claim totaling $40,978.04, including $30,000. of bonds, $600.00 of coupons, and $8,775.00 of other accrued interest to January 1, 1937, and $1,603.04 interest subsequent to that date, for which the City paid $21,750.00.

Mr. Clarke:

When you say "other interest accrued to that date", do you mean that simple interest, or compound interest?

A. Simple interest. My figures do not include interest on interest, except in the case of these existing writs where interest on interest has been imposed, and is still in force against us.

Q. How was that account paid? In cash?

A. In cash.

Q. And what percentage of the claim was paid in cash?

A. 53.07%.

Q. The next is Fiduciary Council, Inc., $200,000.; writ for tax levy issued 8-7-37, and pending. What was the claim allowed for Fiduciary Council?

A. The claim, which is still in force against us, was for $90,000. of bonds; $29,500—$29,520.00 of coupons; $8,058.49 of interest on past due bonds; $6,877.36 of interest on interest; making a total of $130,855.85. There has been paid on that writ a total of $50,128.75.

Mr. Adams:

Was there anything paid prior to the levies under the writ?

A. Yes, sir; $8,000.00.

Mr. Adams:

Is that included in the total payments you mentioned?

A. That is included in the $50,000. I have mentioned.

Mr. Clarke:

The $8,000. item, what was that for, Mr. Shaw? Will you refer back to the $8,058 item in that breakdown?

A. That was for interest on past due bonds; interest other than coupons.

Mr. Gibson:

Mr. Shaw, that $8,000. that you referred to as being paid to Fiduciary Council prior to the levy, that $8,000. was not the proceeds out of a special tax levy, was it?

A. It was not.

Mr. Gibson:

All right.

By Mr. Barry:

Q. There is no reduction in the amount claimed by Fiduciary Council, Inc., from that that you have stated here, is there, Mr. Shaw, other than by payments?

A. No reduction in the amount, no, sir.

Q. The next is Augustus T. Ashton, $30,000.; writ for tax levy issued 8-7-37, and pending. Please describe that claim.

A. That claim for the total of $13,771.35, included $10,000. of bonds, $247.50 of coupons, and $3,428.87 interest on past due bonds; $94.98 of interest on interest. The writ is still in effect, and the City has paid on it from special levies $8,828.04.

Q. Was there any special settlement in connection with the claim by monies being paid other than from special levies?

A. No.

Q. Any agreements other than you have detailed here regarding that?

A. No.

Q. The next is Lois H. Harmon, $10,000; writ for tax levy issued 5-13-38; pending.

A. The writ is still in effect.

Q. What was the amount of the claim allowed?

A. $7,265.90, consisting of $5,000. of bonds, $1,590.00 of coupons, and $284.53 of interest on past due bonds; $368.30 of interest on interest.

Q. The last one mentioned here is Thomas Pesik, $50,000., adjusted and settled; dismissed 4-25-38; what about that?

A. That, I believe, is the claim that we carry as Avenius-Pesik-and Parson & Sons. That was a total value on our books of $41,215.00, for which we paid $23,600.00. It consisted of $31,000. of bonds, $10,770. of coupons, $6,780. of interest on past due bonds, the interest stated being to January 1, 1937; and the subsequent interest was

$465.00. In addition to the $23,600. of cash, there was given $7,810. of tax participation certificates.

Q. Now, Mr. Shaw, you have just detailed what has happened in each of the claims contained in Exhibit 10. I will ask you if any amounts or other thing of value was given for the settlement of those suits other than you have detailed here in your answers?

A. No.

Q. Was there any forgiveness for taxes or claims against the City involved in these?

A. No.

Q. Were any of the amounts which you have mentioned, those amounts paid out of the $295,000. put to Mr. Exselsen's special account as Agent for the City?

A. Some of them were.

Q. Can you tell me which ones were?

A. The claims of Helen E. O'Connell, Henry A. Thies, Rybert Mortgage & Securities Corporation, Fiduciary Council, Inc.—

Mr. Adams:

Which Rybert?

A. Except the Rybert Mortgage & Securities Corporation mandamus for $4,950.00, settled on May 26th, 1936. Leo K. Steiner. That seems to be all, Mr. Berry.

Q. Mr. Shaw, you were then referring to a printed sheet. I will ask you if that was Pages 8 and 9 of the Miami Riviera, Coral Gables, Miami, Florida, published under date of June 9, 1939? Is that what you were referring to?

A. I was.

Q. That is a published statement, political statement to taxpayers by Carl L. V. Exselsen, paid for by him, is it not?

A. That is correct.

Q. Is that statement true and correct, Mr. Shaw?

A. We checked that statement against our books. It is not correct as of the figures that I have given you, because the figures that I have presented are those which we took into our accounts. Some of the figures there contain, also, interest on interest, and other charges proven up in the cases, which we did not consider in writing these onto our books. In the main, the statement is correct.

Mr. Berry:

I will ask that you file that, or that that be introduced and marked for identification at this time. (Handing document to the Master.) That will be Defendant's Exhibit 5 for Identification.

(Instrument marked as requested.)

Q. Now, Mr. Shaw, you have just stated that there were certain items of interest that Mr. Exselsen's report shows that are not in the City's records.

A. That is correct, sir.

Q. Does that mean money that was paid to these claimants, or bondholders, in any way?

A. No, it does not. It means that the suits and judgments included interest upon interest, which we have not taken into account on our records except in the case of the remaining writs for special levies, where we have had to account for that interest on interest.

Q. If I understand you, then, the difference between your report and that of Mr. Exselsen is that under the item "Total debt purchase", he uses a larger figure than you show was actually purchased?

A. He would tend to use a larger figure, yes.

Q. And that is the only figure that he has included, interest up to the time at which these people were settled with, and which the City did not include upon its books?

A. And interest upon interest. Now, had the writs

been enforced against us—if the judgments had been enforced against us, that interest on past due interest and subsequent interest would have been enforceable against us, so from a practical standpoint, the larger amount is the one that was purchased.

Q. Let's don't speculate on what the Florida Courts would do; we don't know that.

A. The Florida Courts had already done it in most of those cases.

Q. Now, the column on Page 9 of this Identification Exhibit No. 5, "Purchase Price", that does agree with your records, does it not?

A. I believe so. We have checked that in the past; I haven't recently checked it.

Q. And the names of "who got the money" is correct?

A. Yes.

Mr. Adams:

Let me ask one question to clarify the differences.

Mr. Berry:

Yes.

Mr. Adams:

Mr. Shaw, are these differences in the interest on interest that appear in Mr. Exselsen's statement, Defendant's Exhibit 5, and do not appear on your bond records, are they all in cases where judgments had been entered against the City on the securities involved?

A. I am not prepared to answer that without checking, Mr. Adams, on the matter, as that statement may also include the interest on interest which was being proven up in suits which were in progress. At any rate, the interest on interest, or the amounts in that statement which are greater than our books, certainly represent amounts which either had been proven up in Court or had been claimed to the Court, for subsequent proof.

Mr. Adams:
That's all.

By Mr. Berry:

Q. Now, Mr. Shaw, Mr. Exselsen, at the time he was employed by the City, was also connected with what company?

A. None that I know of, Mr. Berry. I do not have intimate knowledge of Mr. Exselsen's affairs, but to my certain knowledge he devoted his entire time to the City during a period of a year or more.

Q. The statement is made that he secured for the City an offer from Henry L. Doherty & Company, through its subsidiary, Coral Gables Development Company, to purchase all of these delinquent tax assets in one group for $575,000.00 in cash. Is that a true statement?

A. That statement is correct.

Q. Why was the offer declined?

A. It was impossible to consummate the deal. Obstructions arose, and it was my opinion that the Coral Gables Development Company revised their opinion of the worth of the assets.

Q. They were the same assets that were later sold for $457,691.01, were they not?

A. They were.

Q. What was the difference in the situation when the sale was made and when the first offer was made?

A. The difference in the situation was that there had been a considerable public discussion of the deal, at which local interests had criticized the sale, for selfish reasons. The natural result was that a continued study was made by the Coral Gables Development Company of the probable worth of those assets, and they revised their offer.

Q. Now, this sale was after the passage of Ordinance 269, on December 23, 1936, was it not?

A. It was.

Q. Now, that ordinance, in Section 12, provided that the collections from those assets which you later sold should be used in acquiring refunding bonds, did they not?

A. Any such collections after the year 1937; funds received from that source during the year 1937 were not required to be so used.

Q. Now, you have not realized one cent from these assets since 1937, have you?

A. I would not put it so broadly. We had a few, a very few such taxes on our books, after the sale to the Coral Gables Development Company, and I do not at this time know the exact amount received subsequent to that sale, but it is a negligible amount.

Q. Now, this ordinance, and I am reading again from Section 12, provides: In the event the City on or before July 1st in any of said years"—now I am going to interpolate—in the said years from 1938 to 1947, as it is set out here—"shall fail to realize and/or apply said respective sums or their equivalent to and for the purchase and/or acquirement of Refunding Bonds, as aforesaid, the City * * * covenants and agrees that it will levy a further and additional tax based on the assessment roll for the year in which said default occurs". Have you levied that tax since 1937?

A. We have not. We have not been in conditions which would require the levy of that tax.

Mr. Berry:

I move to strike that answer, if Your Honor please, as not responsive. The ordinance is specific as to how much must be expended each year from this source, or made up from another source.

Mr. Haycock:

We submit that he has a right to explain his answer, which he was endeavoring to do.

The Master:

I think we can let him go on and explain his answer. The motion to strike is denied.

A. We have so far complied with the terms of the ordinance.

Mr. Berry:

I again move to strike; that is the legal question for Your Honor to determine, whether they have complied with the ordinance, or not.

The Master:

If that's all his answer, then I think the motion ought to be sustained.

Q. Referring back to the report of Mr. Exselsen on Page 9 of Defendant's Exhibit 5 marked for Identification, did in every instance the claimant who is listed under the phrase "Who got the Money", receive the money set out in that opposite column?

A. Mr. Exselsen made an accounting which was checked and verified by our certified public accountants, in which he submitted evidence of payment of these monies.

Q. Did a single one of the claimants have a refunding bond at the time of that settlement?

A. That I could not say, Mr. Berry. I do not know what these claimants held in their private investments.

Q. You have testified on yesterday exactly what you got in settlement for these amounts, and I am asking if in return for the amounts expended which you now say are correct, you received a refunding bond dated as of January 1, 1937. I am asking whether you bought old bonds and coupons and accrued interest, or whether you bought refunding bonds with the amounts so expended.

A. We bought the old bonds and coupons or the judgments upon them.

Q. Then in not one single instance was any of the expenditures listed by Mr. Exselsen which came out of the proceeds of these tax delinquencies used for the retirement of refunding bonds?

A. As far as that applies to the monies expended by Mr. Exselsen, that is correct.

Q. Now, did the City use any part of that fund, which amounted originally to $457,000, in the purchase of refunding bonds?

A. The City did.

Q. What refunding bonds did it purchase, and from whom and when?

A. The City has purchased $216,833.70 par value of refunding bonds, for which it paid the sum of $109,726.86.

Q. From whom were these bonds purchased?

A. I do not have that data before me, Mr. Berry.

Q. What were the dates of the purchases?

A. I do not have that. That information can be supplied.

Q. You don't know the years in which that purchase was made?

A. During the years 1938 and 1939, I believe; possibly a small amount in 1940.

Q. Have those $216,000.00 of the bonds been canceled?

A. Some of them perhaps have. We have canceled, all told, over $150,000. of bonds. I do not have noted here exactly which are canceled.

Q. Now, after you acquired the original outstanding bonds, either directly or through the Exselsen account, did you in some instances refund to yourself? And I mean by yourself, the City of Coral Gables; either in its own right or as a trust fund, those outstanding bonds, so purchased after maturity, by the issuance of refunding bonds?

A. We did. So far as the investments of the trust fund, they were refunded in refunding bonds and tax participation certificates, and held as a continuing invest-

ment of that fund. We also refunded some of those acquired for the general fund.

Q. Can you give me a list of the bonds that you refunded that were acquired by the City after they had matured, and acquired with its own funds?

A. I can give such a list. I do not have it here.

Mr. Berry:

I will ask that that list be prepared and filed.

Mr. Clarke:

I would like to ask that the source of the money for acquiring the original bond be put on the list, too.

Mr. Gibson:

And I further request that the bond numbers be set forth on the list.

Mr. Clarke:

You mean the old bonds?

Mr. Gibson:

I mean both the old bond numbers and the new bond numbers.

(The Witness):

A. We are going to be here from now on. You want the old bond numbers, the new bond numbers, whether due or past due; date acquired; and whether from Coral Gables Development Company proceeds or otherwise.

Mr. Clarke:

And you, of course, will mark the ones in the Trust.

A. Yes, we will separate the trust.

Mr. Adams:

And let your schedule show whether any of those bonds are included in the obligations of the City involved in this composition proceeding.

A. Yes; whether consented. And now, there is one other point of information that should be on there which has been covered by this testimony; whether canceled.

Mr. Adams:

Yes.

Mr. Gibson:

Mr. Shaw, I would like to ask you a question.

By Mr. Gibson:

Q. I am referring to Petitioner's Exhibit No. 10, in which you set forth a number of law suits that have been settled, and you have testified regarding the basis of such settlements. Did those settlements conclude all nature of claims held by the plaintiffs in the respective suits or cases against the City?

Mr. Havcock:

He has previously answered that question in reply to a question propounded by Mr. Berry.

Mr. Gibson:

It shouldn't be hard for him to answer it again, then.

A. To the best of my knowledge it did, Mr. Gibson.

Q. As a matter of fact, Mr. Shaw, did not the City, through Mr. Exselsen, purchase a number of other bonds not in litigation from the same plaintiffs?

A. Well, you are now going to later dates. That may have happened at later times.

Q. It did not happen as a part of the same settlement?

A. No.

Q. In other words, you say—

A. I am discussing the claims which were in existence at the time of these settlements.

Q. I am discussing the same claims.

A. And of which we had knowledge.

Q. And at the time these law suits were settled, you state that other bonds and securities held by the same plaintiffs and not in judgment and not involved in these suits, were not purchased by the City's agent?

A. I had no knowledge. I can't speak for the agent's knowledge, but I can say that we had no knowledge, speaking for the City, of the holding of any other claims.

Q. Now, Mr. Shaw, I don't know whether you testified to this or not, but if you have, it shouldn't be hard to remember, and I think I would like to get it clear. The $8,280.00 claim of Leo K. Steiner was entirely interest coupons, was it not, and that claim was settled at one hundred cents on the Dollar, was it not, and settled 4-28-36?

A. I think you are correct on that, yes.

Q. The same is true of the $4,950.00 item for Rybert Mortgage & Securities Company, settled 5-26-36?

A. I believe that is true.

Q. Now, so that the record may not be confused, when I refer to the purchase of other securities held by these same plaintiffs, I am referring to the purchases taking place not later than the latest date set forth in this Petitioner's Exhibit No. 10 for any of the settlements. In other words, I am not discussing anything subsequent to the happenings set forth on said exhibit, the said purchases taking place within the period covered by the settlements set forth on Exhibit No. 10, and nothing subsequent to said period. Can you tell me, Mr. Shaw, referring now particularly to the Leo K. Steiner settlement of $8,280.00 on 4-28-36, and Rybert Mortgage & Securities settlement of $4,950.00 on 5-26-36, whether—or were these

settlements made prior or subsequent to the entry of a peremptory writ?

A. I think I'll let Mr. Adams answer that. He has followed the legal course of these matters, and I frankly do not remember. I am reasonably sure that a preemptory writ had been entered, because I don't—

Q. (Interrupting) Do you know whether or not those peremptory writs were entered by agreement and stipulation, or through understanding of counsel?

A. I do not. That, again, is a question to be answered by counsel.

Q. Mr. Shaw, do you not recall a suit brought by Rybert Mortgage & Securities Company on a mandamus to examine the books of Coral Gables?

A. I do.

Q. Does it not come to your mind, then, that these peremptory writs were permitted to be entered and the payment made in full at that time?

A. It does not come to my mind. I have no particular detailed memory of cases that went back to 1936 in which I was interested only and peculiarly in the financial aspects, and I think that should be answered by the attorney who was handling the cases.

Mr. Gibson:

That's all.

By Mr. Warren:

Q. Mr. Shaw, I want to ask you one question about this Rybert matter. In your answer this morning you said there was a judgment of Rybert for $35,182.33, and another of $108.270.01, a total of $143,452.34, and you settled that for $66,036.37. You didn't tell us what those items were made up of.

A. I thought I did. You want that detail of the bonds?

Q. Of the bonds, yes.

A. That included $100,000. of bonds, $28,742.48 of interest coupons, $3,242.50 of other past due interest—

Q. On bonds?

A. On past due bonds; and $11,467.36 of interest subsequent to January 1, 1937.

Q. You mean that's interest on bonds, or interest on—

A. On both.

Q. On both bonds and coupons?

A. Yes, sir.

Q. And do you include interest on interest there?

A. No, no interest on interest.

Q. Interest on coupons?

A. No interest on coupons.

Q. Just interest on the face amount of the bonds?

A. That is correct. We have never marked on our books interest on interest, except where it has been forced by judgment or writ.

Mr. Warren:

That's all.

Mr. Adams:

We didn't understand, Mr. Shaw, the last item of $11,467.36. What is that?

A. That's the interest subsequent to January 1, 1937, on the bonds; not on interest; no interest on interest.

Mr. Adams:

That's all.

By Mr. Clarke:

Q. Mr. Shaw, as I understand the Plan of Composition as now presented, it was presented on the basis of Ordinances 269 and 289, plus the ordinance making this applicable to a bankruptcy proceeding; is that correct?

A. That is correct.

Q. Do those ordinances contain any provision concerning the disposition of tax participation certificates for the years that were later involved in the sale to Coral Gables Development Company?

A. I believe Section 12 of that ordinance provides that the proceeds of those tax certificates through the year 1936 shall be applied to the purchase of bonds. It makes no—

Q. (Interrupting) Excluding, however, according to your contention, anything collected in 1937?

A. Correct. The ordinance, however, makes no specific provisions for the disposition of those assets.

Q. Except the proceeds.

A. That is correct.

Q. Which were to be used for certain purposes. Now, the plan, then, was presented on the basis of those assets being held for the retirement of bonds over a period of ten years, three years of which have passed, and seven years of which are in the future; is that correct?

A. That is correct.

Q. The plan was then presented on the basis of those assets or the proceeds thereof being held for that purpose?

A. Or used for that purpose. Excuse me, Mr. Clarke. (Discussion off the record.)

Q. Isn't it a fact, Mr. Shaw, that prior to the filing of this bankruptcy petition, but subsequent to the enactment of Ordinances 269 and 289, that by consent of the bondholders who had then, or a substantial portion of the bondholders who had then accepted the plan, wasn't that provision not eliminated from the plan by consent of those bondholders?

A. No. No. No provisions of the plan have been eliminated to my knowledge.

Q. Were not the claims of the bondholders under the refunding plan, those who had accepted it prior to the

bankruptcy proceeding, were not the claims of those bondholders to those tax certificates released and relieved from those assets?

A. Not from my interpretation of the circumstances.

Q. You testified some moments ago that Defendant's Exhibit 5 for Identification had been checked by you, being Pages 8 and 9 of a newspaper, and I refer you to this statement: (Page 8): "However, Exselsen did Not turn these assets over to the creditors. Instead he secured from the Bondholders an express release waiving all claims to these assets and thereby, for the first time, made available to the City, As Free Assets, all proceeds which could be realized from the liquidation of these delinquent tax assets either through redemption or sale". Is that a correct statement?

A. I said, Mr. Clark, that we had checked the financial data on that page, and so far as it referred to cash, it was correct. So far as it referred to the amount of obligations involved, it was slightly at variance with our books, but in most cases larger. I did not place my imprimatur upon that statement in so far as it contains the expressions of Mr. Exselsen. Now, as a matter of fact, the statement to which you have just referred did not apply to a release of Section 12—of the provisions of Section 12, or any other provision of Ordinance 269 or 289; it referred to the previous plan under which all the delinquent taxes—delinquent assets of the City were to be handed over, lock, stock and barrel, to the creditors.

Mr. Adams:

You mean delinquent tax assets?

A. Yes; delinquent tax assets and delinquent lien assets and other delinquent book assets. In this January 1, 1937, settlement, that provision was left out, and instead, the City retained those delinquent tax and assessment lien assets, to be liquidated through its own offices, with a provision, as I have previously mentioned, that a

portion of the proceeds developing after January 1, 1938, be applied to the purchase and retirement of bonds.

Q. Well, I would like to now ask you to examine, and I suppose you have examined in the past, Defendants' Exhibit for Identification 5, and point out to us anything in the whole exhibit that you do not agree to be correct. I just want to find out what part of the exhibit you approve and what parts you don't approve, if there are any.

Mr. Redfearn:

Just a minute, Mr. Clarke. Are you referring to the figures?

Mr. Clarke:

Everything.

Mr. Redfearn: (Continuing):

Or the taxpayers' statements Exselsen is publishing and reporting and denying, or what are you referring to?

Mr. Adams:

Your Honor, may I object to even the identification of that publication? We are objecting to everything on it except the financial statement, on the ground that it is not proper evidence. It is hearsay, and on its face was a political publication. We have no objection to the financial statement.

Mr. Berry:

If the Court please, in reply to that, that is a local newspaper that is apparently signed by an agent of the City, duly employed by ordinance; he is defending his own work. There has been no denial of the correctness of any of the affirmative statements in that, and as far as the thing goes, I think it is not hearsay, but a statement by

an official representative of the City, in print, and it was brought here by the witness examining that and making answers from it.

Mr. Adams:
As to the financial statement.

Mr. Redfearn:
He was not agent for the City at the time he made that paid political advertisement; that's a paid political advertisement that was published during a hot campaign here in Coral Gables, and in it Mr. Exselsen has quoted some statements which he claims are false matter with reference to his conduct and character. He quotes them, and then takés them and says they are fraudulent and false. Now, these gentlemen tender this in evidence as true. So, I think Mr. Adams' motion is very correct, except as to the financial statement.

Mr. Berry:
We have not attempted to alter one iota of that. (Argument presented, off the record.)

The Master:
The motion of Mr. Adams is denied. This exhibit has been put in as a whole, and I don't feel at liberty to cut out portions of it.

(The Witness):
A. I am afraid the Court will have to recess while I read the exhibit, as I have not done so since shortly after it appeared in 1939. I referred to it simply in so far as it contained this financial statement which is set up in a slightly different way than is carried in the audit report that I had before me, and which enabled me to make some detailed answers not otherwise available.

The Master:

Just a minute, Mr. Shaw. With the exceptions that you have noted, you approve the financial portion of that, as I understand?

A. That is correct.

The Master:

And you have testified that you do not put your imprimatur on any of the rest of it?

A. That is correct.

The Master:

Gentlemen, it seems to me that covers it.

Mr. Clarke:

Well, it looks to me like I am going to have to ask him about each paragraph, if the Court please. I was attempting to save time on it.

Mr. Adams:

I think that he has answered the question.

Mr. Clarke: (To Witness):

Do you deny Paragraph 1 in the first column of Page 8?

Mr. Haycock:

Now, if the Court please, unless he can make his question here appear to be pertinent to some of the issues here in this case, we wish to object to the question.

The Master:

Well, let Mr. Shaw read that over. Frankly, I don't see any use in going into each sentence in there.

Mr. Clarke:

I was trying to get out of going into each sentence, if the Court please.

(Thereupon, at 11:35 A. M., a recess was taken for ten minutes, to allow the witness an opportunity to read Defendant's Exhibit 5 for Identification, and during which time the paragraphs contained in said document, commencing on "Page 8", were numbered from 1 to 17, both inclusive, for a matter of reference on further examination.)

Cross Examination.

By Mr. Clarke:

Q. I would like to put again the question, to point out the paragraphs which he does deny, and that will make it easy on the witness.

A. Well, I haven't prepared to do that. You may call the paragraphs, and I will answer.

Q. Well, on Column 1, Page 8, the first paragraph.

A. The first paragraph, I believe, is entirely correct.

Q. The second paragraph?

A. That also is correct.

Q. And the third paragraph; is that the paragraph you have already explained?

A. That is the paragraph that I have already explained.

Q. And that is the paragraph that I quoted from in the record?

A. Correct.

Q. And the fourth paragraph?

A. That is correct.

Q. And the fifth?

A. That is correct.

Q. And the sixth? Now, I will not ask you to express your opinion on the political advisability of these matters. State whether the facts in there are correct.

A. That is correct. I also would make reservation as to any statements in here which are obviously conclusions. For instance, in this paragraph he mentions "a small disgruntled group which incidentally later formed the nucleus of the present Taxpayers Association"; that's in Paragraph 5.

Q. All right. And the next, or the 7th paragraph.

A. That is correct.

Q. No. 8?

A. That is correct.

Q. No. 9?

A. That is correct, with a reservation. I believe that the contract with Mr. Exselsen under which his fee was paid covered both the negotiation of the debt settlement and the disposition of the delinquent assets, and if that be the case, then to that extent Mr. Exselsen received consideration from the City in connection with the sale of the delinquent assets.

Q. No. 10?

A. I have no definite knowledge of Mr. Exselsen's employment, but I firmly believe that to be true.

Q. No. 11? That's an accounting.

A. I have testified as to the accounting figures, with certain reservations.

Q. No. 12?

A. I believe that's correct.

Q. Now, referring to Page 9, the paragraph that is numbered 13.

A. That is correct.

Q. No. 14 is an accounting about which you have already testified?

A. I have previously discussed that.

Q. No. 15?

A. That is correct, except that where it refers to the audit of those accounts, I actually audited that which was received by me and which the City expected to receive un-

der the various settlements, and found it correct; the detailed audit of the transactions was made entirely by Pentland, Purvis, Keller & Milton.

Q. I will not ask you about 16 and 17, as to the political desirability or undesirability. Mr. Shaw, will you produce a copy of the contract dated October 11, 1937, covering the sale of delinquent tax assets to the Coral Gables Development Company?

A. Yes, sir. (Discussion off the record.)

By Mr. Berry:

Q. Mr. Shaw, have you been able to find the contract referred to?

A. I have a copy which is in the minute book, and I have placed it before you.

Mr. Berry:

Can we go ahead with this, with the understanding he will put a copy in the record this afternoon when he finds it?

The Master:

It is so ordered.

Q. Will you hand the Court Reporter the original of that contract this afternoon?

A. I will.

Q. And I ask that that be marked, when it is handed to him, as Defendants' Exhibit 6 for identification.

A. May I ask that it be substituted for with a certified copy?

Q. Yes; you can just give us a certified copy in the first place.—This is the contract under which you sold to Coral Gables Development Company the assets,—the delinquent tax assets? Is that correct?

A. It is correct.

Q. And will you state whether or not the valuation placed on those assets in your previous testimony was the sum of $696,773.18?

A. That is correct, sir.

Q. Will you state whether or not that valuation includes all manner of tax liens or assessments, and all things transferred to Coral Gables Development Company under the contract in question?

A. No, that does not.

Q. Will you state the nature and amount, as shown by the City's books, of any other asset or thing of value that was transferred to Coral Gables Development Company by this contract?

A. There was also transferred to the Coral Gables Development Company the tax deed held by the City on a tract of land known as the Mahi Shrine Club House and Golf Course tract, in according with one of the provisions of the contract providing for the transfer of lands which had been acquired through the enforcement of taxes, which showed a valuation on the 1937 assessment roll of $12,067.00. There was also transferred to the Coral Gables Development Company, $200,000. of face value of tax participation certificates having a then approximate market value of $12,000.00.

Q. Do you mean tax participation certificates issued under this refunding plan?

A. I do.

Q. Were those immediately transferred, or were they contingent upon some future happening?

A. That was a contingent provision, and is described—the contingency is described in the provisions of the contract.

Q. Do you refer to Item "C" in this first paragraph of the contract?

A. I do.

Q. Will you state whether or not there were other things transferred?

A. There were no other considerations given by the City.

Q. And what is the aggregate amount of additional considerations other than the $696,000. and some odd dollars valuation testified to by you yesterday?

A. Expressed in the then approximate value, $24,000.00.

Q. Did that include the $200,000. worth of TPCs.?

A. It did.

Q. Did that include the Shrine Club?

A. It did; the tax deed held by the City to that property.

Q. And were those the only two items?

A. They were.

Q. Did the $696,000. item include the face of any tax certificates other than for the years 1932, 33, 34 and 35?

A. It did not.

Q. Did not the contract, in effect, transfer tax claims and assessment claims for all years prior to that?

A. No. The contract provided that for the years 1931 and prior, the City would hold in escrow the tax certificates and other tax liens, and upon the written request of the purchaser, to either cancel the same or permit the full use thereof in any foreclosure or other legal proceedings affecting any of the properties constituting the subject matter thereof.

Q. Were those to be canceled for a consideration, or without consideration?

A. Without fee.

Q. Were the use of them in the foreclosures to be for the benefit of the City or the purchaser under this contract?

A. For the benefit of the purchaser.

Q. Well, what was the face amount of those delinquent taxes not included—the delinquent tax liens not included in the estimate of the 1932 through 1935 liens?

A. They were the taxes for the years 1925 through 1931, in total amount, as of October 31, 1937, of $1,985,-516.23, of which $1,540,086.92 represented the 1926, 29 and 30 taxes which had been invalidated and upon which a reassessment was later unsuccessfully attempted.

Q. Is that your tax, or your special assessment?

A. That's the tax.

Q. Did you transfer by this contract any lands other than the Shrine Club you referred to?

A. We did not.

Q. Did you transfer any lands which the City had title to through tax foreclosures other than the Club referred to?

A. No.

Q. Did you transfer your right, title and interest under certain contracts identified in Paragraph 1-B of this contract?

A. We did; and that contract—

Q. What were those contracts?

A. That contract was a quite old contract with Coral Gables, Incorporated, under which the City was to receive certain taxes if, as and when collected by that Company in connection with its enforcement of its purchase money notes, contracts, and other land liens.

Q. What was the face amount of those claims remaining at the time of this sale under the contract?

A. As of June 30, 1936, the amount appears to have been $360,379.00. As a matter of fact the City had received nothing under the contract for some five years, and it was in the same hopeless state of delinquency as were the City taxes on the same lots.

Q. Do you know whether there was any relation between Coral Gables Property, Inc. and the purchasers under this contract?

A. I know at that time there was not.

Q. Was there ever any relation that you know of, if you know?

A. Any legal relation between the corporations? Any interlocking arrangement?

Q. Yes.

A. None that I know of.

Q. Now, the $200,000. of TPCs that were to be delivered to them were to be delivered without further consideration on their part; is that correct?

A. That is correct.

Q. Other than the amount of cash they paid for this contract?

A. That is correct.

Q. Were there any further agreements with respect to special assessments?

A. What do you mean by further agreements?

Q. Any agreements other than those about which you have testified.

A. No. That is the only agreement that the Coral Gables Development Company had.

Q. You referred to delinquent taxes prior to the year 1932 as being held in an escrow account for cancellation or foreclosure without further cost to the purchaser.

A. I did.

Q. As being held in escrow. Was there an agreement, in Paragraph Fourth, whereby it was agreed that—

The Master:

Just a minute. Paragraph Fourth of what?

Mr. Berry:

Of this Exhibit 6; Defendant's Exhibit 6.

Q. (Continuing) Whereby you agreed to cancel all previous special assessments, and also not to reassess under the assessments that had been thrown out as to the lands affected by the other provisions?

A. There was.

Q. What was the face amount of those special assessments and the potential face amount of the re-assessments?

A. As of June, 1936, the assessment liens for street and sidewalk improvements which had been invalidated totalled $1,400,149.00. The potential re-assessment value was "zero".

Q. Have there been any re-assessments?

A. There have not.

Q. Made on any lots anywhere?

A. Not as to assessment liens.

Q. Is there an intention to make any assessment liens?

A. No.

Q. What was the purpose of Paragraph Fourth of the Exhibit?

A. The City had not at that time made up its mind whether it would attempt such a re-assessments; it was considering a re-assessment of both the taxes and the assessment liens.

Q. Were there any special assessments that had not been canceled on these lots involved in this contract?

A. None.

Mr. Adams:

May I ask him a question to complete that?

Mr. Berry:

Yes.

Mr. Adams:

Was an attempt made to back-assess general taxes for the years 1928-29 and 30, and if so, what became of that?

A. An attempt was made to back-assess the 1928-29 and 1930 taxes which had been held invalid by the Florida Supreme Court, concurrently, I believe, with the 1938

current tax roll. The Court held that the time for re-assessment had lapsed, and that the City was barred from any attempt to make and enforce a re-assessment.

Mr. Adams:
That's all.

By Mr. Berry:
Q. Now, for these taxes that were covered by this contract, and excluding the $60,000. and some odd dollars of 1936 tax certificates, I believe you testified you were paid $396,900.00?
A. That is correct.
Q. That purchase price, was that the sole purchase price paid for the various assignments under this contract?
A. That is correct.
Q. Then the item of $696,773.18 does not represent the correct face amount of all things transferred to Coral Gables Development Company under this contract?
A. That item simply represents the tax sales certificates, and the sheet upon which it appears so shows.

Mr. Berry:
That's all for now.

(Thereupon, at 12:20 P. M., a recess was taken until 1:30 P. M., at which time the witness G. N. Shaw returned to the witness stand; thereupon, the following proceedings were had:)

Mr. Clarke:
Now, will you produce for the record and identification a copy of Resolution 1608 of the City, and furnish that to the Reporter?

Mr. Shaw:
I have it here before me.

The Master:
What is that, now?

Mr. Clarke:
That will be for Identification, Defendants' Exhibit No. 7.

The Master:
What is that Resolution?

Mr. Shaw:
That's a resolution appointing Carl L. V. Exselsen exclusive representative of the City to negotiate a Debt Refunding Plan, in conjunction with the Mayor and the Commissioners.

The Master:
All right. (Document to be later filed.)

Cross Examination (Of Mr. G. N. Shaw).

By Mr. Gibson:
Q. Referring to Paragraph 3 of Defendants' Exhibit No. 5, found on Page 8 of said exhibit, you make the statement, I believe, that you do not agree with Mr. Exselsen's statement there that for the first time an express release was received from the bondholders waiving all claims to the assets referred to, and making said assets free assets for the use of the City as they see fit. Is that correct? In other words, you disagree with the substance of Paragraph 3.

A. I will not answer that that broadly and generally. Paragraph 3 is a very general statement. In effect it is

correct. However, to understand it you must understand the difference between the January 1, 1937, plan and the previous plans. This was a release from the previous conditions attaching to those assets. Previous plans had provided specific transfers of them, or escrows of them. This plan left them in the hands of the City, and I will go as far as to say, to do with as the City saw fit. It provided certain uses for the proceeds of those assets if any were realized.

Q. What uses did it provide for the proceeds of those assets during the year 1937?

A. None.

Q. Then as far as the realization of those assets for the year 1937, they were free assets?

A. They were.

Q. And by agreement, the bondholders had consented to the use of those assets for any purpose that the City saw fit?

A. For that particular year.

Q. When did you make delivery of the tax participation certificates to the Coral Gables Development Company?

A. I do not recall the date, but—

Q. Will you supply us that date?

A. I would say at approximately—

Q. I would like to know it definitely, if you can.

A. I will have to look it up before I can say definitely. (After examining records.) January 27, 1938.

Q. Now, Mr. Shaw, you made the statement in the record that this $200,000. of TPCs had a cash value of $12,000.00. How did you arrive at that?

A. By using an approximate market of "Six".

Q. And how did you arrive at the approximate market of six?

A. From my knowledge of the trends of the market at the time.

Q. As a matter of fact, wasn't the market at that time approximately around "ten"?

A. Not to my recollection.

Q. Do you have any records showing the market at that time?

A. I do not.

Q. Do you know what the market is today?

A. I do not, because I have not had time to check it for the last several months.

Q. Well, then, that estimate of $12,000. was simply your guess, was it not?

A. I wouldn't say that. I have been in intermittent communication with bond brokers, and on points such as this have checked with them to attempt to verify what the market was.

Q. Then you state that you are familiar with the TPC market and that the value of TPCs at that time was approximately $12,000.00, and there was no material variation?

A. That was my conclusion at the time I made the estimate, not only upon my own knowledge but with conversations with others who should know something. I don't say that I am thoroughly familiar with the TPC market.

Q. How did you arrive at the value of the Shrine Temple property?

A. By taking the assessed value upon the City's books for the year 1937, as I previously stated.

Q. That does not, then, represent the actual cash value?

A. I believe it to represent the actual cash value at that time.

Q. Have you any knowledge as to what the replacement value of that property is?

A. Not at this time. That property was entirely vacant land.

Q. There were no improvements on it?

A. There were no improvements; it was absolutely undeveloped, without streets or sidewalks; it was overgrown with palmettoes.

Q. I just thought there was a building on it.

A. The best means of determining the value as of that time would be the assessment rolls which at that time had been upon a basis of full value.

Mr. Gibson:

That's all.

Cross Examination (Resumed.)

By Mr. Berry:

Q. Mr. Shaw, this morning I asked you the question as to how many refunding bonds were purchased by the City of Coral Gables from the proceeds of the sale of the tax sales certificates, and so forth, to the Coral Gables Development Company, amounting to $457,691.01, and I understood you replied that you had purchased refunding bonds of the face value of $116,000 for approximately $109,000 from those proceeds.

A. I think that was $216,000, Mr. Berry. I think you misunderstood me.

Q. $216,000 for $109,000?

A. That is right.

Q. They were selling for approximately 50¢ on the dollar at that time?

A. Yes, sir.

Mr. Clarke:

Excuse me; I don't want to get mixed up on this. Is that $216,000 the face of the old bonds, or of the new bonds?

A. The face of the new bonds.

By Mr. Berry:

Q. The face of the refunding bonds. That was in the question. Now, is the Audit of December 31, 1938, that has been referred to heretofore, correct?

A. It is.

Q. Will you refer to that, please, Mr. Shaw? I believe you have it before you. On the last page, or Schedule 3, of that audit they show the receipt of the $457,691.01, do they not?

A. That's correct.

Q. Next follows the disbursements by Mr. Exselsen as agent. The first item is $253,381.34, is it not?

A. That's right.

Q. And that was for the purchase of bond judgments, was it not,—outstanding bonds and accrued interest?

A. That's right.

Q. Were there any refunding bonds in any of that?

A. No.

Q. Now, the next item is $30,000 to Mr. Exselsen personally, is it not?

A. That is correct.

Q. And the next item is $1,693.37 of his expenses?

A. That is correct.

Q. Now, the next item is the purchase of 118 refunding bonds of 1-1-37 for $53,701.12, is it not?

A. That is correct.

Q. Who were they purchased from?

A. That I would have to investigate and report back, Mr. Berry. I haven't the details before me.

Q. Were those bonds purchased outright, or where old bonds purchased and new bonds issued to you and put on your books?

A. To the best of my knowledge and belief those were purchased outright. The table of bond purchases which I have before me is not so made that I can directly relate it to either of these figures, but that can be done.

Q. Well, passing that item, the next is the purchase of the Thies judgment for $10,000.00.

A. Yes.

Q. There were no refunding bonds in his judgment?

A. No.

Q. The next is the purchase of $2,000 of original bonds and accrued interest for $1,100.00.

A. That is correct.

Q. And there were no refunding bonds there?

A. No.

Q. The next is an item of $60.00 for past due coupons, isn't it?

A. That is correct.

Q. The next item is the $80,000 fee to Mr. Exselsen, isn't it?

A. It is; which includes the $30,000, previously mentioned.

Q. The rest of the items, then, have nothing to do with the purchase of securities?

A. No.

Q. And the expenses that I have set out here totaled $457,377.93, do they not?

A. That is correct, sir.

Q. And leaves a balance of $313.08 unexpended from that fund?

A. That is correct.

Q. Now, where did you get the balance of the $109,000 from that fund that you expended for these bonds for this itemized distribution which you say is correct?

A. There were other monies. I believe—I am sure, received from later purchases of taxes by the Coral Gables Development Company, and such monies were used, together with the monies represented here, for the purchase of these refunding bonds in this schedule.

Q. Now, then, my question was, out of this specific sum of $457,000, how much was used for the payment

of refunding bonds, and you said $109,000. Do you now care to change that answer?

A. I am afraid I will have to change that answer, because either I misunderstood you, or I mis-spoke myself. What I perhaps should have said was that out of the proceeds of delinquent taxes, and this and that, we had bought these sums of bonds.

Q. Were those additional sums on top of this $457,000 collected in the year 1937?

A. Not all of them, no.

Q. How much additional funds were collected in that year for past due items?

A. I would have to break down that item, Mr. Berry, and see just what additional funds accrued and just what the division of these securities is. The schedule which I have before me represents all the securities which have been purchased by the City.

Q. Then, outside of the $53,000, of which you have not the detail at this time, not one penny of the amount paid by Coral Gables Development Company went for the purchase of refunding bonds; is that correct?

A. Not directly for that purpose.

Q. Well, did it go indirectly for that purpose? And if so, when and where?

A. Yes; in that we bought the old obligations and converted them into the new securities.

Q. Now, did you have an ordinance permitting or authorizing the purchase of these old obligations?

A. I would like to study that question a little before I answered it.

Q. Just take your time, sir.

A. As to that, Mr. Berry, I am going to say that I don't recall any specific ordinance. I am going to have to qualify and explain my answer by saying that the purpose of the provisions of Section 12 of Ordinance 269 was to retire during the ten years of the plan preceding the

sinking fund a Half Million or more of refunding bonds. It was our opinion that this result would be accomplished by the purchase of the old securities and the removal of them through the cancellations in accordance with the schedule from the operations of the plan.

Q. Now, in 1937 the refunding bonds were rather freely traded in at about 50¢ on the Dollar, were they not?

A. Not in 1937, I don't believe, because—

Q. At what figure were they traded in in 1937?

A. 1937 was the year in which the refunding was in progress, and I am not sure just how much trading there was.

Q. Well, could they be bought at all during the year 1937?

A. I assume they could.

Q. Do you know of any actual trades made, and the prices which were paid for the bonds?

A. I don't recall, no, sir.

Q. Do you recall any price in excess of $50.00 a bond?

A. No.

Q. In 1938 do you recall any price in excess of $50.00 a bond?

The Master:

Just a minute, Mr. Berry. $50.00 a bond?

Q. I mean $50.00 a Hundred on the bonds, or 50%.

A. I'm not sure about that, Mr. Berry. The market advanced slowly. We bought them as low as approximately 42¢ on the Dollar. We paid as high as 65 to 66¢ on the Dollar. Now, I would have to secure the dates of these purchases to say just when the market was at any particular point. I'm satisfied that these figures represent the market as of the date upon which the purchases were made.

Mr. Clarke:

Mr. Shaw, on some of these indirect purchases you are talking about, you paid 200¢ on the Dollar, didn't you?

A. I'm not talking about the indirect purchases, Mr. Clarke.

By Mr. Berry:

Q. Mr. Shaw, isn't it a fact when you paid a man in cash 50% of the face amount of his bonds in the year 1937 after the refunding bonds were available, or in the year 1938, as against a delivery of 50% in refunding bonds, that you were paying him about twice as much in actual value than could be realized?

A. Do you mean when we paid that price for the old securities?

Q. Yes, sir.

A. I would not so state.

Q. Well, why would you say that was incorrect? Explain it.

A. Well, we have, for example, the cases of Fiduciary, and C. J. Root, in which a much higher figure was realized upon similar bonds. By a reduction to judgment, the bonds might have been enforced at face plus interest, and interest on interest.

Q. Well, doesn't it result that the two bondholders you have named received substantially more for their bonds during the refunding period than those bondholders who came in and accepted your refunding plan of 50% in new bonds and interest, and the balance of the 50% in tax participation certificates?

A. You are speaking now of the Fiduciary and Root judgments?

Q. Yes, sir.

A. I will answer that, "They did".

Q. I was trying to eliminate from this those claimants who reduced their claims to judgment and secured a tax levy. As I understand that, if the levy is successfully

collected, they will recover 100% of the amount of their judgment with interest; is that correct? That is, isn't it?

A. That is correct.

Q. I'm speaking of the people to whom you voluntarily paid cash, as you have described here this morning, if they did not receive 50% in cash, which was a much higher actual cash value than the equivalent in refunding bonds and tax participation certificates could on that date be sold for on the market?

A. I don't want it to appear that I said this morning that we voluntarily paid cash in these cases. We settled some of these matters while they were pending as law suits to secure judgment, and reached a levy, and certainly there was nothing entirely voluntary about that; while others were settled that represented to be on the point of instituting such proceedings.

Q. Mr. Shaw, did you not, on the 30th day of June, 1937, on behalf of the City of Coral Gables, in connection with the Mayor and the Commissioners, enter into a contract with Mr. Exselsen, one of the provisions of which is to pay Mr. Exselsen for the services—Paragraph Third, Section C, quoting: ("* * * to be rendered by said Exselsen in a persistent and conscientious effort to negotiate all adjustments with those creditors who may not have consented to the refunding plan at the time the same is declared operative, it being understood that each of such special adjustments is to be dealt with specially by the City Commissioners after the same have been negotiated to the point where the greatest savings can be effected and the most favorable terms to the City developed"?)

The Master:

Just a minute. For the record, you are reading from an exhibit, aren't you?

Mr. Berry:

I am reading now from Defendant's Exhibit 1, marked for Identification.

A. Yes.

Q. Was there any law suit that compelled you to enter into that contract with Mr. Exselsen by which he could force you to go into it?

A. By which he could force us to go into it?

Q. Wasn't that contract voluntarily entered into on behalf of the City of Coral Gables, Mr. Shaw?

A. That is correct, Mr. Berry. This contract is the outgrowth of several contracts which had been considered by the Commission and Mr. Exselsen. Disagreement, as to minor terms, had deferred the signing of this contract until its date, June 30th, 1937. In effect, this contract had been in existence for some time before its actual signing.

Q. Doesn't that authorize Mr. Exselsen to specially negotiate with anybody he sees fit and report back to the City?

A. To do that, but only that.

Q. And he did negotiate specially with various people?

A. He did.

Q. He negotiated with people who had never brought suit against the City, did he not?

A. He did.

Q. He bought bonds as the agent for the City from people who had no judgment or suits pending against the City?

A. No judgments pending at the time.

Q. And no suits pending at the time?

A. And no suits pending at the time. He bought bonds from some who sued us later.

Q. Well, what was the compulsion on the City to have Mr. Exselsen do that, if you say it was not voluntary?

A. The compulsion was the experience with a comparatively few hold-out bondholders who had commenced

to sue the City for judgments and special writs. Such a thing is not unusual in refundings, as a matter of fact, has happened in nearly every refunding in the State of Florida, and perhaps elsewhere.

Q. Now, you passed the two ordinances, 269 and 289, did you not?

A. The City Commission passed those ordinances, yes, sir.

Q. When I say "you", I'm referring to you as an officer of the City.

A. Yes, sir.

Q. Were either of those ordinances at any time ever modified or rescinded or amended?

A. No, except that 269 was amended by 289.

Q. I mean the two of them, standing together.

A. You said "either".

Q. So the resolution of the City is still as set out in Ordinance 269, which says that the principal of the indebtedness shall be readjusted and refunded by the issuance of this 50%?

A. That is correct.

Q. But notwithstanding that, where a suit was entered against the City, or where a man refused voluntarily to adjust, you either directly or through your agent, Mr. Exselsen, settled with him on a different plan and schedule?

A. We had no other remedy at that time.

Q. Well, state whether you did, or not, and then explain all you please.

A. We did. We had no other recourse at the time. The Municipal Bankruptcy Act, so-called, as it now exists, was not available. We were at the mercy of those who attempted to secure full payment through the threat of blocking the settlement through suits.

Mr. Clarke:

I would like to have you state the dates on which the Municipal Bankruptcy Act wasn't available to you.

A. I think if you will permit me to, I will refer you to the lawyers, and they will give you the dates.

Mr. Clarke:

I am referring to the date you referred to when it wasn't available to you.

A. The year 1937, I believe, after the refunding was commenced.

By Mr. Berry:

Q. You exchanged in August and September, did you not?

A. May I ask counsel to give me the dates?

By Mr. Clarke:

Q. I can tell you the date; it was in August, 1937, that the present Act, without Section "J", was passed. Am I correct, Mr. Adams?

Mr. Adams:

Yes.

Q. And as I understand, you exchanged after the Act was passed, and that's why I want you to give me the date you referred to.

A. If I'm correct, the Act had been immediately questioned. Mr. Haycock, may I ask you for the dates of the early changes in that set-up?

Mr. Clarke:

I'm willing to let it go at that.

Mr. Haycock:
The Court will take judicial knowledge of when it was passed.

The Master:
You can read those dates into the record if you want to.

Mr. Haycock:
I would like to read into the record that the Act of August 16, 1937, which is Chapter 10, was held unconstitutional on November 13, 1937, but was upheld by the Supreme Court of the United States on April 26, 1938.

Mr. Clarke:
And will you also state in there it was held constitutional in other lower Court cases?

Mr. Gibson:
And I would like to have also inserted in there in what District Court it was held unconstitutional in 1937.

The Master:
The Master can find out those things.

Mr. Gibson:
Well, here's the situation; it was held constitutional in Florida immediately, and unconstitutional out in California or Iowa, someplace, and if he is going to put anything in there, let's have it all in there.

(Further discussion on the above subject, after which the examination of the witness was resumed.)

By Mr. Berry:
Q. Mr. Shaw, to your knowledge was there, at the time you made these various settlements we have been talking

about, any legal restraint on the City from making those settlements different from the refunding plan?

A. I know of none, sir.

Q. You testified you thought it was the only thing and the best thing to do.

A. That is correct.

Q. Do you know of any moral reasons why you shouldn't have made those settlements?

A. As of that time, no.

Q. Has anything in the way of an act or law been passed since that date up to the present time which would make such a settlement illegal or prohibitive?

Mr. Adams:

We object; the witness isn't a lawyer and hasn't qualified as a lawyer.

The Master:

That objection is well-taken; sustained.

Q. Was there any ordinance passed by the City of Coral Gables after the Ordinance 289 which prohibited the Commissioners from making this type of settlement?

A. None to my recollection. Just a moment. You lawyers may think more deeply as to the construction of ordinances than I. Ordinance 347, I believe, adopting that as a plan of Bankruptcy, would have prohibited any such settlements as we have been discussing.

The Master:

What is the date of that ordinance?

Q. That was passed on the 5th day of March, 1940?

A. That is correct, sir.

Q. Well, is that the first time that the City passed an ordinance making this plan the plan of the City, not to be deviated from?

A. I believe so. I would like to say that you are asking me for legal opinions on the ordinances.

Q. This ordinance of the 5th day of March, 1940, in the recitative part, states that Ed. C. Wright and associates have declined to accept refunding bonds, and that the City is morally and legally obligated to take all legal steps available to it to force the exchange of 100% of the old obligations for the refunding securities. I ask you to what that sentence refers.

A. The attitude of the City Government as expressed by that ordinance.

Q. And nothing more?

A. An obligation to its majority creditors to make the plan complete if at all possible, without subjecting the City to measures which would interfere with the proper maintenance and operation, and which might interfere with a proper service of the refunding bonds.

Q. Shortly before the adoption of that ordinance, suit had been filed by the American National Bank for a tax levy to pay the bonds in question, had it not?

A. That is correct.

Q. To be more technical, for payment of the indebtedness due.

A. That is correct, sir.

Q. And following that suit you refused to negotiate, and passed this ordinance; isn't that true?

A. No, I would not say following that suit. The day before that suit was filed, Mr. Ed. C. Wright, representing himself as the owner or representative of those bonds and coupons, sat with the City Commission and discussed the possibilities of settlement. No agreeable decision was reached. The next morning, without notice, the suit was filed. I would say that from that time forward Mr. Wright refused, indicating his refusal by the suit.

Q. Now, Mr. Shaw, I believe you have given us the history of the exchanges made on Exhibit 10 filed by Mr.

Adams, and partially the history of the bonds purchased by Mr. Exselsen. We have not yet found out what the refunding bonds that were purchased for $53,701.12 were, nor have we found out what exchanges of old bonds were made after they were acquired by the City, and that is the list that I now want.

A. That list, Mr. Berry, I will be glad to prepare during the interim in this case and immediately following these hearings, and will mail you copies. I do not have that data in the way you want it, at the present time.

Q. In preparing the list, will you please give, so far as you can, the numbers of the old bonds, from whom acquired, the price, whether or not the bonds had matured at the time they were acquired, or matured prior to the issue of refunding bonds?

A. Yes, sir.

Mr. Clarke:

May I add there, together with the source of the money from which they were purchased?

Mr. Berry:

I was coming to that. Just put that in there, too.

Q. When the City acquired old bonds, matured or unmatured, and coupons, did they in each instance issue refunding bonds for such old bonds and coupons, or did they cancel some of them without a re-issue?

A. It is my recollection that all bonds or coupons acquired prior to January 1, 1937, except those held by the Trust Fund, were canceled; that those acquired after approximately that date were kept alive; and when I say approximately that date, I think that there were none acquired in the early months of 1937.

Q. Your best recollection is that whenever the City acquired a bond by buying it and paying the holders of

that bond in cash, after January 1, 1937, that after the bond had passed into the possession of the City, the City re-issued to itself refunding bonds under the plan, which it held, and later canceled as to some of them?

A. That is correct, sir.

Q. And you were attempting to comply with the refunding plan and Ordinance 269, which requires the retirement of so many refunding bonds a year by canceling the refunding bonds acquired in that way?

A. That is correct.

Q. Is there any ordinance on file authorizing the issuance of those bonds to the City itself?

A. I know of no ordinance requiring it; I know of no ordinance forbidding it.

Q. Do you know of any ordinance permitting it, or touching the subject at all?

A. Not directly, no, sir.

Q. Now, Mr. Shaw, are there any other trades which the City made with creditors, either bond creditors or other creditors, which were not under the refunding plan, and were not made through Mr. Exselsen?

A. By that you mean the purchase of old securities?

Q. Yes, sir.

A. Some were made directly by the City after the surrender of the balance of these funds to the City by Mr. Exselsen.

Q. Will you please give us a list of those? I believe you have that.

A. My list includes all of those, and I will show it in the schedule which I will prepare for you.

Q. That is the schedule now before you on yellow sheets, and which is to be typed out and furnished?

A. Yes; this is a work sheet from which we will compile the variously grouped data for which you have asked.

Q. Now, getting away from bond creditors, did you make any settlement with other creditors during the

period from the adoption of Ordinance 269, and, say, the adoption of the bankruptcy ordinance on March 5, 1940?

A. We did.

Q. Are they large in number, or few?

A. Comparatively few.

Q. Can you tell us—

A. By settlement, do you also mean the issuance of the refunding bonds for the original claim?

Q. What I am attempting to set up, Mr. Shaw, is what the City spent on other claims during that period before that, other than bondholders, where they got the money and why they made those settlements, whether they were voluntary or compelled by a Court.

A. In two cases we made settlements which deviated from the exact refunding plan.

Q. Now, will you give me the party with whom it was made, the date, and how it was settled, and the origin of the money, and whatever else you used to settle it?

A. I cannot give you the data from this source.

Q. Well, give us the record of the transaction.

A. In the case of a land mortgage and land mortgage notes, held by the Estate of Sarah McGuire, of Pittsburgh, Pennsylvania, a slight deviation was made from the plan.

Q. Were those notes executed by the City?

A. They were.

Q. Purchase money notes, or for what purpose?

A. Purchase money notes.

Q. What land did it involve?

A. Salvador Park, as shown on the plats of the City.

Q. Was it a general obligation of the City, or only an obligation to be enforced by foreclosure?

A. A general obligation of the City, and the claim had been reduced to judgment. The judgment was in the amount of $71,965.50 and the accrued interest amounted to $25,580.91. The payments made by the City were as follows: $449.78, which was an adjustment of the in-

terest accrued on the applicable refunding securities from January 1, 1937, to July 1, 1937, and which interest was paid to all accepting and exchanging creditors. The City paid to the estate $6,965.50, for which it received $5,982.75 of the refunding bonds which had been issued to the estate, and a like amount of the tax participation certificates. Other than that, the bonds and tax participation certificates were issued in accordance with the plan. A further provision, made necessary because the estate of Sarah McGuire would not release the mortgage, was the placing in escrow of $27,000.00 of the refunding bonds and $27,000.00 of the tax participation certificates, together with the mortgage, with the provision that the City would buy at par $2,000.00 of the bonds each year until the bonds had been completely bought from the escrow; that concurrently with those payments the mortgage would be partially satisfied and the tax participation certificates in escrow would be released to the estate in equal amount to the bonds purchased. That latter feature is an entirely separate matter to the exchange of the bonds. We also, in the case of—

Q. Just a minute before you pass the McGuire matter. There is something that is not clear to me. The total claim was how much? Some 90-odd Thousand Dollars?

A. Yes; some $97,000.00.

Q. $97,000.00. That was reduced to judgment against the City?

A. That is correct, sir.

Q. Was there a decree of foreclosure of the properties secured by the mortgage?

A. Mr. Adams, will you answer that?

Mr. Adams:

Not that I know of.

Mr. Berry:

Can we just insert that Mr. Adams, the City Attorney, says he does not know of such?

The Master:
All right.

Q. Did you settle that claim by the issuance of refunding bonds and tax participation certificates?

A. We did.

Q. And what amount of refunding bonds did you issue?

A. We issued $35,982.75 of refunding bonds, and $61,563.66 of tax participation certificates.

Q. Now, you immediately bought back how many of those?

A. $5,982.75 of each class of the securities.

Q. And how much did you actually pay in money to the McGuire Estate at that time?

A. For that purchase, $6,965.50.

Q. And $5,982.75 of tax participation certificates?

A. That's approximately correct.

Q. Now all of those bonds, and all of those certificates, together with uncanceled mortgage notes, were then placed in escrow?

A. Not all of the bonds. The Estate was divided between four parties; two parties to the estate accepted their refunding securities at once without any further terms as to the release of their portion of the mortgage; the other two principal parties to the estate, who had received $27,000.00 of the refunding bonds and $27,000.00 of the tax participation certificates, entered into the escrow agreement with the City that I have described.

Q. You were to buy those bonds at how much per year?

A. Buy them at par, at $2,000 par value per year.

Q. And how much of the tax participation certificates do you buy?

A. We don't buy those. They are released from the escrow to these contracting parties in equal amounts to

and at the same time that we purchase the bonds from the escrow.

Q. Then, when you buy the $27,000 principal amount of bonds, the mortgage note will be canceled, and the mortgage released; is that correct?

A. That is correct.

Q. And at that time the tax participation certificates will be in the hands of the parties entitled to them and they will get whatever they may pay?

A. That is correct.

Mr. Clarke:

Who gets the dividends on the TPCs in the interim?

A. They do, as well as the interest on the bonds.

By Mr. Warren:

Q. Mr. Shaw, what is the balance due on the mortgage at this time?

A. We have only bought $6,000 of the bonds to date. I am not familiar with the balance as it has been partially released, nor am I certain at this time whether there was any partial satisfaction of the mortgage at the time the escrow was entered.

Q. You mean a partial cancellation?

A. Yes; a partial cancellation.

Q. What was the original date of that obligation, Mr. Shaw?

A. That original mortgage note?

Q. Yes, sir. If it was before 1937 or after 1937.

A. Oh, my God, it was back in 1925 or 1926.

Mr. Haycock:

Give us the exact date on that, George.

Mr. Warren:

You can supply that later; let's go ahead now.

A. I have it on my records downstairs. (Following date supplied to the Reporter.) The date of the McGuire note was March 8, 1926.

Q. Was this indebtedness of the Sarah McGuire estate to be affected by the present plan of composition?

A. It was, and was listed in Ordinance 269 as one of the obligations to be covered. I might say further that previous to January 1, 1937, the attorneys for Sara McGuire had indicated that they would accept the settlement, before the death of Mrs. McGuire, but her death changed the situation and it was necessary to enter these special terms.

Q. And is their debt to be affected and reduced in any respect by the present plan of composition?

A. That is not the intention.

Mr. Warren:

That's all.

Cross Examination.

By Mr. Gibson:

Q. Do I understand you to say, Mr. Shaw, that this particular debt is not included in this particular plan of composition for reduction?

A. That is not what I said.

Q. Well, let me ask the question.

A. This particular debt has already accepted the securities upon which the City has based its plan of composition.

Q. You have already made a separate adjustment of this debt, and you are keping that adjustment without attempting to change it; is that correct?

A. I believe that's correct. I don't know that we have to undo that which transpired before this was made a plan of composition.

Q. As a matter of fact, Mr. Shaw, you have just about made separate deals, and separate agreements, with all of your creditors except Ed. C. Wright and those he represents, have you not?

Mr. Haycock:

Your Honor, I think we might as well interpose an objection; he has gone into every account that has been brought out here today, and he has testified the manner in which they have been settled, and now he is being asked the same question over again, and we would have to recite every case that has been discussed here this day and answer every question, and I move it be stricken.

The Master:

I think he can give a brief answer to that question; the objection is overruled.

A. With a great majority of them we have actually exchanged in accordance with the plan. With some, under duress, we have made special deals. With others, under the threat of duress, we have made special deals.

Mr. Clarke:

What was mine, Mr. Shaw? Which class does mine come in?

A. I would call a Federal Court judgment the ultimate of duress.

By Mr. Gibson:

Q. With the exception of some few bonds that have not been located and the ownership of which is not known, such as occurs in all cases, you have either refunded or

made a special settlement with all of your known creditors except Wright and those he professes to represent, have you not?

A. No.

Q. Name those you haven't.

A. We have certain judgments which are being enforced against us which cannot be considered a settlement.

Q. Which judgments are those?

A. There are six judgments, comprising Fiduciary Council, C. J. Root—

Q. (Interrupting) I said, you have made a settlement; you have made a settlement with Fiduciary, haven't you?

A. No, we have made no settlement with Fiduciary.

Q. You entered into an agreement with them, did you not, for the liquidation of their indebtedness?

A. We did; we gave and received certain consideration in connection with that contract, and with the express penalties for the violation of our—

Q. (Interrupting) Without regard to whether or not you are trying to default on that settlement, you did make settlements with everybody except Ed. C. Wright, did you not, and agreements, and those he professes to represent?

A. Let's put it this way, Mr. Gibson, and maybe I can answer it. That there are $321,000 of bonds—

Q. I would like to have you answer my question.

The Master:

Let him answer it in his own way, Mr. Gibson.

A. There are $321,000 of bonds and the accrued interest thereon, and a small amount of past due interest coupons, approximating, I think, $20,000, which have not been in some way converted from their original status, and which do not now exist as refunding bonds or tax participation certificates or judgments.

Q. With the exception of a small proportion of them representing unknown holders, those bonds belong to Ed. C. Wright and the American National Bank, do they not?

A. I have no knowledge of that. They have so claimed.

Q. Do you have knowledge of the claim those two groups filed?

A. I do.

Q. What is the aggregate of their claim?

A. I believe the principal amount is $252,000 of the bonds.

Q. Leaving how many?

A. Leaving 69.

Q. 69 bonds. In other words, you have made special settlements with all your creditors, or have refunded the bonds of all your creditors under the Plan, with the exception of 69 bonds, and with the exception of Ed. C. Wright and the American National Bank group; that's true, is it not?

A. Yes, but not—under the terms of the plan; we have other debts which cannot be considered as settlements; they are judgments existing as mandatory writs.

Q. Well, you might not consider them as settlements; we do; and that's one of the issues in this case, and I don't want to argue that.

Mr. Adams:

We object to counsel arguing with the witness about legal matters and interpretations.

Q. Now, I would like to ask you, Mr. Shaw, the source of the $200,000 in TPCs that you gave to the Coral Gables Development Company.

A. The sources were various, Mr. Gibson. Those TPCs, as is stated by the Contract with the Development Company which is in evidence, were to be derived from the purchases of securities by the City through the use of the proceeds of that sale.

Q. I see. In other words, you took some of the proceeds of the sale of delinquent taxes, purchased either defaulted, or refunding Coral Gables bonds, and then delivered back to Coral Gables Corporation tax participation certificates to the extent of $200,000 par value; is that correct?

A. That is correct.

Q. Now, Mr. Shaw, will you kindly explain to me where you find any authority in this plan or in any ordinance of Coral Gables, for the payment to Coral Gables Development Company of $200,000 of the TPCs from the bonds purchased from the proceeds of such sale?

A. I know of no ordinance which permits, or no ordinance which forbids.

Q. Can you show the minutes of any meetings of the City of Coral Gables which reveals it?

A. The adoption by the City Commission of the contract with Coral Gables Development Company is in itself an authorization.

Q. Does that show the source of the TPCs?

A. I think it very plainly sets forth the manner in which those TPCs are to be acquired.

Q. And that is the only matter of record of the source of these TPCs?

A. I believe so.

Q. Now, will you show me some place in the plan, or can you show me some place in the plan where it provides for the payment of the aggregate amount paid to Mr. Exselsen for fees from the proceeds of the sale of those delinquent taxes?

A. No. I don't believe that there is any such provision in the plan. No plan can be effected without expense, and it was certainly understood that the release of the requirement from the use of the proceeds from the delinquent taxes which might be received during the year 1937 was for the purpose, in part, of providing the City with money with which to pay Mr. Exselsen.

Q. And at that time that plan was published, was it contemplated that these tax delinquencies should be sold to the Coral Gables Development Company during the year 1937 so that money would be available during the year 1937?

A. No.

Q. It was not contemplated?

A. There was, however, at that time under consideration the so-called XYZ Corporation sale.

Q. What is that?

A. That was the previous proposal to purchase the assets, and a different plan—

Q. In other words—

The Master:

Wait a minute. Were you through?

A. No; I think I can add a little more onto that. And, as a matter of fact, that XYZ Corporation plan was fully explained to the bondholder groups with whom the City Commission and Mr. Exselson negotiated in December.

Q. When did the City first contemplate disposing of its tax delinquent assets in a lump sale as it was done?

A. Perhaps I had better give a little more detail there, Mr. Gibson. In about September of 1936, and at about the time of the employment of Mr. Exselsen, the City Commission proposed to the representatives of the creditor groups a refunding which would use the delinquent assets for the creditors in satisfaction of the debt to be outstanding over and above the amount to be refunded in bonds. That plan involved this XYZ Corporation, so-called simply because no name had been devised for it at the time, and under that plan the assets were to be actually transferred. That did not suit the representative creditors—

Q. Now, when you speak of the representative creditors, to whom do you refer?

The Master:

Wait a minute, Mr. Gibson; I don't think he is through yet.

A. No, I am not through yet. And Mr. Exselsen explained then that he was negotiating to secure the formation of the XYZ Corporation entirely apart from the creditors. That idea had occurred to him, that they would take over all these delinquent assets, not in a lump, but they would be put in escrow and then drawn down by payments of so much per year, or whatever anticipation they desired. That then became the inspiration for Section 12 of Ordinance 269, so that while the creditors or their representatives were not advised as to the Coral Gables Development Company deal, they were certainly advised as to the plan that had been in development as the predecessor of that plan.

Q. When you speak of creditors, to whom do you refer?

A. I mean quite a few men who were representing various creditor groups. At that time the Bondholders Committee, the Coral Gables Bondholders' Protective Committee only had approximately 50% of the bonds deposited; quite a number of the bonds had been withdrawn following the failure of the 1935 plan; and there were several active representatives of major groups making up a good part of the remaining 50% of bonds. I don't recall their names off-hand, but they will be in my files. I will have to search them.

Q. Were any of these things ever discussed with Fiduciary Council or their representatives?

A. That I would not know. I was not present at any discussions with Fiduciary Council or their representatives.

Q. As a matter of fact, Exselsen's fee and his expenses took about 25% of the proceeds of the sale, did they not?

A. Exselsen's fee and expenses took $92,000, which was slightly less than 25% of the sale of the old delinquent assets, not including the 1936 taxes.

Q. Now, you speak of later tax sales certificate purchases by the Coral Gables Development Corporation. When were they made?

A. Intermittently.

Q. Can you advise us—

A. They still—

Q. (Cont'g)—the extent of those?

A. No, not without an examination of my records. We don't attempt to keep track of the payments of purchases by any one taxpayer or tax buyer.

Q. Will you give us a schedule of the supplemental sales made to the Coral Gables Development Company?

A. That schedule would be very voluminous. I would be glad to give you the amount.

Q. Could you give it to us in amounts over the period of time covered by all the sales, by years?

A. Yes.

Q. In other words, when the sale was made, and what years the certificates covered?

A. Yes.

Q. And the face of the certificates, and the amounts paid for them?

A. Yes.

Q. Now, you stated, did you not, Mr. Shaw, that settlements were only made because of judgments or the imminence of starting suit? Is that correct?

A. That, I believe, is the reasonable explanation of the situation.

Q. Do you not know of a regular procedure followed by your Agent under which he purchased bonds at a price exceeding the market value, and then would sell those bonds at a price at which the market would absorb them, under a specific agreement that the bonds so purchased

at such reduced price would cooperate with the plan, the City or this fund absorbing the difference and the loss?

A. I do not know of any such.

Q. You don't know of any such practice?

A. No, sir.

Q. Details of no such transactions ever came to the attention of your office?

A. No.

Q. Or of the attention of the City?

A. Not to me.

Q. If Mr. Exselsen did indulge in such practice, it came within the scope of his contract, did it not?

A. That I would not say. I would like to consider that point before I would give any answer.

Q. As a matter of fact, Mr. Shaw, the majority of these settlements and purchases along toward the end of 1937 were made after the Municipal Bankruptcy Act was available to the City of Coral Gables, were they not?

A. Some of them were. I would like to explain that answer, in conjunction with a previous answer. At the outset, the City hoped to completely consummate this agreement, this settlement, without resorting to the Municipal Bankruptcy Act. It appeared during a part of the exchange program that that might be possible.

Q. For reasons of its own the City finally resorted—

The Master:

Wait a minute. Are you through, Mr. Shaw?

A. No, sir. However, the City was not in position—it later developed the City was not in position to bring in all of them by negotiation, and the funds which might be available to dispose of hold-out claims were exhausted.

Q. When did those funds become exhausted?

A. I would say that they became exhausted by the purchases of securities and the payment of expenses that I have described previously today. They practically be-

came exhausted as a lump sum upon, and before, the accounting made by Mr. Exselsen to the City on approximately May 5, 1938.

Q. On May 5, 1938, how many of said funds did you have?

A. From the audit report it appears that we had at that time $313.00 of those funds.

Q. What had happened to the funds that were allocated to the settlement of hold-out claims between the amount so used and the amount on hand at that day?

A. No amounts had been allocated to the payment of hold-out claims. The funds had been spent in entirety, except for this $313.00, for the purchase of those claims or for the payment of expenses of the refunding.

Q. As I understand it now, the entire proceeds of the tax delinquent properties sale was turned over to Mr. Exselsen to settle hold-out claims, and Mr. Exselsen settled as many as he could, or as many as he thought he could, and he then delivered the money back to you, what was left of it; is that true?

A. No, that is not true. $295,000 of those proceeds were turned over to him, but with no authority to proceed on his own initiative.

Q. What were they turned over to him for?

A. I believe that previous documents in evidence here state that they were turned over to him to keep them from being seized by militant hold-out creditors.

Mr. Clarke:

That was a good idea.

Q. But most of the money was paid to those militant hold-out creditors, was it not?

A. Yes.

Q. And what was not paid to those militant hold-out creditors was retained by Mr. Exselsen, was it not?

A. No.

Q. Where did it go?

A. It was returned to the City. The money was returned by Mr. Exselsen, and a part of Mr. Exselson's fee was authorized to be paid to him out of those funds. That came to $30,000.00.

Q. In other words, all except $30,000 was either paid to hold-out creditors or kept by Mr. Exselsen?

A. No. I have previously stated there were other expense items in that. We have in the record a statement which shows exactly what was done with those funds.

Q. Primarily, the funds became exhausted because they were invested in the securities of the City of Coral Gables by the City of Coral Gables? Is that true?

A. I should say that's true.

Q. Now I should like to have you explain a little bit this settlement made with the Florida Power & Light Company.

A. The settlement with the Florida Power & Light Company which we made was one, simply, of giving them bonds and tax participation certificates for their principal debt and accrued interest, exactly under the provisions of the ordinance.

Q. They did not get a separate issue of bonds for that?

A. For a part of it; a part of it applied to the second series bonds.

Q. What were those second series bonds.

A. Bonds which had been held by the Court to be not serviceable out of taxation against homestead exempt values.

Q. To whom did they go?

A. They went to the creditors who had been named by the Court in the validation proceedings as not having had claims enforceable against value exempted by the Homestead Amendment, in November, I believe, of 1934.

Q. What was the nature of those claims?

A. An open contract between the City and the Florida Power & Light Company in the amount of $149,630.11, with accrued refundable interest of $32,199.75, and three small liability—personal injury judgments, to W. W. Blount, Parker Maxwell, and E. B. Connally, in the principal amounts of $15,063.45, $274.65 and $765.28, respectively, and interest amounts, respectively, of $4,333.60, $50.12 and $140.34.

Q. What did the Florida Power & Light Company receive in bonds and TPCs?

A. They recived $74,815.06 of second series refunding bonds, which was exactly one-half of the principal of their claim as described in the ordinance, and $107,014.80 of tax participation certificates, which was the other half of the original principal amount plus the interest.

Q. I thought you said their principal amount was 90-some Thousand?

A. I said $149,000.

Q. How many first series of bonds did the Florida Power & Light Company receive?

A. The Florida Power & Light Company also held a certificate of indebtedness of the City of Coral Gables, dated June 28, 1928, amounting to $120,843.29, and with accrued interest to January 1, 1937, amounting to $52,-590.30. For this claim it received $60,421.64 of first series refunding bonds, and $113,011.95 of first series tax participation certificates.

Q. What was the source of this indebtedness to Florida Power & Light Company?

Mr. Adams:

If Your Honor please, we object to that. The Supreme Court of the State of Florida has passed upon that and decreed that it be refunded in the manner that it was refunded, and we think it is irrelevant and incompetent to the issues in this cause.

The Master:

I can't see that that question is objectionable. The objection is overruled; proceed.

A. I don't remember the exact nature of the indebtedness which makes up the $120,843.00 certificate of indebtedness. It was incurred before my time, and I have no personal knowledge or recollection. I have investigated it in the past, but some years ago. I believe that it is made up of amounts due the Company for material and service in connection with the City's then street railway company, or street railway lines, and perhaps for street lighting. I don't remember exactly. But it was a proven and provable claim.

Q. Can you tell us in the aggregate how many first series bonds Florida Power & Light Company has?

A. Now?

Q. No; what you gave them.

A. What we gave them originally?

Q. In the aggregate, how many first series bonds.

A. $60,421.64.

Q. That's for all three claims there?

A. For both claims there.

Q. In the aggregate of—

A. (Interrupting) One claim received first series, and the other claim received second series.

Q. Which claim received the first series?

A. The Certificate of Indebtedness.

Q. What was the source of that other claim?

A. The other claim arose out of an indebtedness assumed by the City in connection with the street lighting system. The Company had, at the instance of the City, installed a great many street lighting poles, and all the service necessary for it, which the City found after some three months of operation of the lights and payment of the bills that it could no longer afford it, and an amendment was made to the contract under which the City

assumed certain depreciation and other charges on that unused equipment. The contract had not expired; it had, even at the date of this refunding, some years to run. The amounts accrued at January 1, 1937, and I believe under the original contract exceeded the amount that I have named. The Florida Power & Light Company, recognizing the dire position of the City, again modified the agreement and set up a liquidated amount which would be accepted in cancellation of the accrued amount and all the future course of the contract.

Q. And at the same time they modified that agreement they agreed to take these bonds as they have been issued to them?

A. That's correct.

Q. Did they extend the period of time for that contract when they modified it?

A. Did they extend it?

Q. Yes.

A. It is my recollection that that contract was for a specific period and expired some time during 1937, and that they did extend it; I'm not positive as to that.

Q. In other words, the contract for the future lighting and the contract to take these bonds, was all one transaction?

A. The contract for future lighting? No, sir. This had nothing—

Q. Well, it was entered into all about the same time, and the negotiations contemplated both questions.

A. No. The agreement for the settlement of this contract on a liquidated amount was reached quite considerably in advance of even the formation of the 1-1-37 refunding plan.

Q. Well, then, how did they agree to take these bonds if it was before the formation of the plan?

A. I was speaking of the contract by which a liquidated amount was established for the entire contract—previous contract.

Q. In other words, you had established an amount.

A. We established an amount some time in advance of January 1, 1937, but when this refunding came up, they agreed to accept and did accept the securities.

Q. And that was just about the time the new contract or extended contract for lighting was entered into?

A. No, sir. There has been no extended contract for lighting. As a matter of fact, the only amendments to the lighting contract have been in the nature of reductions of current costs made voluntarily by the Florida Power & Light Company.

Q. When did you extend your contract for lighting that expired in 1937?

A. I did not say our contract for lighting expired in 1937. I said the agreement or contract under which this contract covering the payment of depreciation charges on these unused poles was for a limited period. That had nothing to do with the contract for current for the lighting of the streets.

Q. When did you enter into the contract for the current for lighting the streets?

A. I think with the Florida Power & Light Company, in 1926.

Q. Was that contract ever altered, amended or changed?

A. Yes, it has been altered, amended and changed, first by the elimination of the lights on the equipment for which this contract we have been discussing agrees to pay the depreciation charges on the equipment. It has been amended from time to time by the addition of a few street lights here, and the removal of a few street lights there, and it has been voluntarily amended by the Company to give us more lighting at the same rate.

Q. What were the other items refunded with the Series Two bonds?

A. Only one other item has been actually refunded with the second series bonds, and that is the judgment of W. W. Blount, in the amount of $15,063.44, with accrued interest to January 1, 1937, of $4,333.60, for which was issued $7,531.72 of second series refunding bonds, and $11,865.32 of second series tax participation certificates, which were computed exactly in accordance with the ordinance. The remaining items that I have mentioned, the judgments of Parker Maxwell in the amount of $274.00 and E. B. Connally in the amount of $765.00, have not been refunded.

Q. Are they included in the creditors of this plan?

A. They are.

Q. Has the City in any manner, directly or indirectly, purchased any of the securities given to any of these creditors just discussed, including the Florida Power & Light Company?

A. It has.

(At this time the above was discussed at length, off the record, after which the examination was resumed:)

Q. What creditors of the City of Coral Gables, as of the date of filing the petition, are not included in the petition, to be affected by the composition?

A. Well, all creditors are included in the petition other than those for the current operating bills of the City and for notes for installment payments on replacement equipment. I should say that all creditors are to be affected by the composition.

Q. Current or not current obligations, what would you say, if you can, is the amount of open account indebtedness as against the City that is a general obligation of the City that this plan of composition does not contemplate scaling down those accounts?

A. You mean to include the current operating expenses?

Q. I mean to include all creditors, other than secured obligations.

A. I'll have to have that March report. I have only the year-end audit here. (Securing report.) The petition was filed on June 27th. May I use June 30th as the date which is the date of the close of the fiscal year?

Q. Yes, that's all right. Now, when you said all creditors except current creditors, you did not intend to include this settlement of the $90,000.00 claim belonging to the Estate of Sarah McGuire?

A. Yes, I meant to include that.

Q. Does this plan of composition attempt to scale down the obligation that arose by virtue of the settlement of the Estate of Sarah McGuire?

A. It does not; but—

Q. Then it is not included, is it?

A. But the protection of the City against additional and exorbitant tax rates will naturally preserve the securities that were issued to McGuire and the other refunding creditors, and prevent a break-down of the plan.

Q. But this proceeding does not attempt to scale down the debt or in any way change, alter or modify the previous arrangement or special arrangement that you made with the Estate of Sarah McGuire and her heirs with regard to the settlement of their $90,000.00 claim, does it?

A. No.

Q. Now I would like to have you tell us the source of the bonds given to the estate of Sarah McGuire, and the source of the TPCs given to Sarah McGuire.

Mr. Adams:

Your Honor, we object to these questions about the Sarah McGuire account. It has already been shown that the Sarah McGuire judgment and claim is secured by a mortgage on real property owned by the City, and under the terms of the Act is excluded from the class of creditors being dealt with in this proceeding.

Mr. Gibson:
They are taking the proceeds of tax sales certificates and purchasing real estate with it.

(The Witness):
A. Not in the case of the Sarah McGuire clam, Mr. Gibson.

Mr. Gibson:
I didn't ask you the question. I'm making an argument to the Court. Shall I proceed, Your Honor?

The Master:
I frankly do not see the relevancy of it, but I will not exclude it. Go ahead.

Q. I asked you to give me the source of the bonds and the source of the TPCs given to the executors or heirs of the Sarah McGuire Estate in this settlement.

A. They were the bonds, I might say, which were printed for that purpose and authorized to be printed for that purpose by the refunding ordinance.

Q. What was the source of the cash paid to Sarah McGuire or her heirs?

A. I would not be able to say. It came from the general funds of the City. I do not believe it appears in any of the so-called Exselsen transactions.

Q. I would like to know from what accounts that cash was drawn. Can you supply that at a future date?

A. I can supply that at a future date.

Q. Will you give that information to the Reporter so it can be included at this point?

A. I will. (The following information was supplied): Partial payment on the McGuire judgment was made from the money expended by Exselsen from the proceeds of the sale of tax sales certificates to the Coral Gables Development Company.

Q. From what source is this $2,000.00 a year being paid?

A. From a levy to purchase those bonds.

Q. A specific levy to purchase these specific bonds?

A. A specific levy to purchase those bonds.

Mr. Gibson:

That's all.

Cross Examination (Resumed).

By Mr. Berry:

Q. Mr. Shaw, when I last was cross examining you, I was asking you about settlements made by the City other than through Mr. Exselsen, which were not strictly in accord with the refunding ordinance but which might be called special or separate, and you mentioned the McGuire settlement, the Florida Power & Light Company and three damage claims, I believe, so far. Now, are there any others?

A. Mr. Berry, the McGuire settlement was not entirely in accord with the refunding ordinance, although the securities which were issued for it were exactly in accord with that ordinance. In that case a portion of the bonds—

Q. Let me interrupt, Mr. Shaw; you are not responsive. I am not arguing about it, and I think that has been gone into fully; and I am trying to exclude those five from the others you may name, without referring to it in any way; I don't see the necessity of it. I think we have exhausted it.

A. I am not just trying to get this in, but I think it is necessary to the answer. Those concerned first series bonds. Now, the Florida Power & Light claim was not a special deal, as I think I understand you to mean. There were no special terms in connection with that deal. It was discussed simply as an exchange of second series securities for the old debt, and that is true of the three

small judgments I mentioned. The McGuire case is not in the same category with the Florida Power & Light, the W. W. Blount, the Parker Maxwell and the E. B. Connally cases; that's why I thought I ought to explain that.

Q. I am trying to differentiate between those cases wherein when claim is made you paid 50% of the amount of the principal debt in refunding bonds and the remaining 50% and all interest in tax participation certificates. Now I am asking about settlements wherein something else occurred than the mere exchange occurred on that basis, which I understand is the ordinance, and I thought you had named the five instances that I reviewed as falling within that category. I am not trying to be critical of you; I am merely trying to get the information. Are there any other settlements where the City paid more or less than what I am describing that the ordinance provided, or paid in any other manner than provided in the ordinance, or did any other fact or thing enter, not provided for, in those settlements.

A. I think I have discussed them all, Mr. Berry. I would have to read the testimony to see; but I have previously stated that I would put in a schedule showing all of those instances. If I omitted the McGuire from my previous testimony, it was simply because the McGuire did not relate to any of the things that we had before us at that time.

Q. Now, Mr. Shaw, the original Ordinance 269 was passed in December, 1936, and I think you testified it was agreed that that plan would be declared in effect when you got the consents of 90% of the then outstanding indebtedness or the holders of that indebtedness; is that correct?

A. I think the ordinance states it will be declared in effect when a percentage acceptable to the City Commission and not less than 90% has accepted.

Q. Well, when was that plan declared in effect, and how was it done?

A. Mr. Berry, I have never considered that point, and I don't remember off-hand just what acts constituted that effecting of it.

Q. At the risk of some repetition—you signed the refunding bonds in New York City towards the end of the month of August, 1937?

A. That is correct.

Q. And began your exchanges in September, 1937?

A. That is correct.

Q. Now, on that date the plan was declared operative, or you would not have done it; is that true?

A. It must have been declared operative on that date or at some previous date. I don't remember the exact incident.

Q. Well, is there a record in the City's records of that plan being declared in effect, by Resolution, Ordinance or any other official action?

A. I do not recall exactly. I do not believe so.

Q. As rapidly as the refunding bonds and the tax participation certificates were issued in exchange for the old, they were brought here to Coral Gables and canceled, were they not—the old ones?

A. No, sir.

Q. What was actually done with them?

A. Actually, I went to New York in August, I believe, of 1938, and checked the old bonds and coupons, satisfied myself that they were right, and had them canceled by the Central Hanover Bank & Trust Company, and shipped here as canceled bonds.

Q. Now, at that time had the outstanding bonds been reduced to the amounts set out in Ordinance 347?

A. They had not.

Q. This ordinance recites that 94.18% of the City's old obligations have consented to the plan and received refunding bonds, does it not?

A. That's right.

Q. Now, was the equivalent of that number of bonds—old bonds, canceled?

A. Yes.

Q. Now, Mr. Shaw, there is 1.84% of this indebtedness that you recite here has been placed in judgment and now there are peremptory writs outstanding. That is these claims that you have described to us where they got writs to levy a special levy for their payment?

A. Yes, sir.

Q. And they are now being paid to the amount which the judgment was rendered for or agreed upon?

A. Yes, sir.

Q. Now, were the bonds upon which those claims were based taken up or canceled, or are they still outstanding, filed in Court, or where are they?

A. My understanding is they have been canceled by the Court.

Q. They have not been returned to the City?

A. I believe not.

Q. You treat those as canceled obligations, and are recognizing the judgment or whatever may be the present form of it?

A. We have to, under the terms of the indebtedness.

Q. Well, how do you do it?

A. Yes—we do—we do it that way.

Q. Therefore there are only outstanding now the 3.7% of the indebtedness being the $252,000. of bonds owned and held by Ed. C. Wright & Company, and .91% of the obligations, or $74,000. of obligations, which are held by people unknown?

A. That is all of the bonds that are outstanding in the original form, yes.

Mr. Adams:

I think the record shows a refunding of some since that date that were included in the $74,000.00.

A. Yes; but I understood we were talking about that date.

Q. My associate here calls this to my attention; I was reading from the record; it says they are owned and held by Ed. C. Wright and associates, and the American National Bank of Nashville, Tennessee. I am not trying to change that language in the form of the question, and I put that in for the benefit of the record.—Now, outside of the remnant of the .91%, whatever that might be, Mr. Adams suggested some may be refunded, the 3.07% which are held by Wright and associates and the American National Bank, and the 1.84% held by these others, what claims are to be affected by this plan?

Mr. Haycock:

We object, if the Court please, as asking for a legal conclusion from the witness. I think that's a matter for the Court to decide.

Mr. Berry:

I think under the law he has to allege in his Petition what the claims are, and I think it is in order, to determine what the claims are, and not for the Court; I think he determines that from the evidence.

The Master:

I think that is a legal question. If Mr. Shaw can answer it, all right, but if he can't, all right.

A. If my attorneys are willing for me to answer it, I will try.

Q. To clarify my question, in view of the objection, there are certain claims that are outstanding in this petition, as I understand it, and I have asked the witness from an accounting standpoint if they are including in the accounting practices here any of the 94.18% claims, and if the claims other than that are not the remnant of the .91%

and the 3.07%. That's all I want to know, if they are all that are on the list to be included; and whether they are legally to be included, I am not asking.

The Master:

The witness should answer as to what they are actually doing as a matter of accounting, but he is not called upon to answer any of the interpretation of the legal aspects.

Mr. Berry:

I am not asking as to any legal effect that that may have upon the plan. Read the question, now. (Question read.)

The Master:

Frankly, Mr. Berry, it seems to me your first question is clearer than your last. Do you want to strike out the last question and let him answer the first one?

Mr. Berry:

It's entirely agreeable, whatever you want to do.

(The Witness):

A. I think that resolution speaks for itself, in that it sets up as the plan of composition the plan underlying the securities held by the 94.18% of creditors. From a practical standpoint, I insist that all creditors will be affected by the outcome of these proceedings.

Mr. Berry:

If the Court please, in defense of my question, in view of that, and for clarification, as I interpret the refunding ordinance it specifically directs the officials of the City to deliver bonds and tax participation certificates in the manner that I have detailed recently several times. Now, when they have done that with any one creditor, I think

that ends the entire effect of that ordinance, which is the basis of this proceeding, and there is nothing else to be done with those creditors, and I am asking him, in effect, how many creditors have been settled with in accordance with the ordinance, and how many are left to be settled with in accordance with it. That's the force and effect, and the only question I am asking, is, how many claims he still expects to adjust, either voluntarily or as a result of these proceedings if he is successful, and I think that that is bound now to be the 3.98%, the 1.84% and whatever balance of the .91% have been unadjusted. Now, that's what I'm seeking to find out as a practical matter at this time. If he has anything that he thinks has yet to be done with the 94.18% creditors, I want to know that. I don't know of anything.

A. I know of no direct effect, in the terms of their obligations, that will result to the 94.18% of securities that have been exchanged as the result of the City's success in these proceedings. The .91% and the 3.07% of the obligations which Mr. Berry has mentioned are the securities which have not yet accepted the plan of composition, and which would have to be so adjusted if the proceeding is successful. Have I answered your question, Mr. Berry?

Q. I think you have. Can you tell me how many refunding bonds are now owned by the City, either in trust funds or in its own right, and how many refunding bonds have been acquired and retired by the City up to this time?

A. I will have to furnish you that data later. I do not have it before me at this time.

Mr. Berry:

That's all at this time.

Cross Examination (Resumed).

By Mr. Warren:

Q. Day before yesterday you testified as to some payments being made on—regular payments being made on coupons on the issue of July 1, 1926, during 1930, after your default. Did you get the amount of that for me?

A. Regular payments on the issue of July, 1926? That was a special assessment. I will get the amount of it for you, Mr. Warren; I haven't yet; I'll furnish that in detail in one of the schedules which I will prepare.

Q. The other day, Mr. Shaw, you testified that after 1936 your assesments were made on a 100% valuation in accordance with the plan set up by the tax assessor of the City of St. Petersburg, Donehoo, but that subsequent to that year and before the next year the Board of Adjustment or a Board of Equalization, I don't know which it was, made some modification of the practice of Mr. Donehoo and allowed a certain percentage each year for depreciation. Did you make a statement of that sort?

A. No, sir, I did not.

Q. Did you make a statement relative to the Board of Adjustment making some adjustment?

A. I may have. What actually happened was that the formula laid down and/or approved by Mr. Donehoo, because some of it was developed here after conferences with him, included a provision for depreciating improved properties. In the assessment that was made in 1935, from valuations that had been worked up in part under Mr. Donehoo's supervision and in part along the technical lines laid down by him, the depreciation was recognized up until that time, and put in effect. In the 1939 roll the City Commission, as a Board of Equalization, again recognized depreciation for the period intervening between the so-called Donehoo assessment, and 1939, and did so, I believe, fully in accordance with Mr. Donehoo's principles.

Q. You mean the 38-39 roll or the 39-40 roll?

A. The tax year 1939, for the fiscal year 1939-40.

Q. Did they do that by resolution, Mr. Shaw?

A. It is my recollection that they did that as a Board of Equalization.

Q. By Resolution of the Board of Equalization?

A. By Resolution or Action of the Board of Equalization.

Q. And there is a record of that?

A. There is a record of that.

Q. May we have that record at the next meeting?

A. Yes, sir.

Q. Mr. Shaw, the Charter of the City of Coral Gables provides that a diminution or reduction in taxes may be given to educational or health institutions, does it not?

A. Yes, sir.

Q. This hotel out here, what is the name of it? The Biltmore Hotel?

A. Miami Biltmore Hotel.

Q. Is that regarded as a health institution?

A. No, sir.

Q. Is it regarded as an educational institution?

A. No, sir.

Q. Mr. Shaw, in Mr. Reed's report, which is Exhibit 18 (Petitioner's), on Page 8, this notation appears: "Mention should be made of the Miami-Biltmore Hotel, now assessed for $1,800,000. By an agreement with Mr. H. L. Doherty, which expires this year but may be renewed, taxes are limited to $20,000 annually. The hotel cost perhaps $5,000,000. Mr. Doherty is said to have an option to buy it for $900,000. It might be assessed anywhere between these two figures, depending upon the judgment of the assessor." Now, is that agreement limiting those taxes to $20,000. still in effect?

A. No, sir.

Q. What agreement do you have with them at this time?

A. None whatever.

Q. And what is the assessed valuation on your rolls?

A. Approximately $1,400,000., producing a tax of a little over $30,000. at the present rate. To explain that more fully, Mr. Warren, I might say that Mr. Doherty considered the purchase of the Miami Biltmore at a time when it stood more or less idle, as the tombstone of Coral Gables. The City Commission was very anxious that that property should be restored to life, and a three-year agreement was entered under the charter provision you have mentioned, by which the taxes were to be reduced to the flat sum of $20,000. each year for those three years if paid before the technical delinquency date. That agreement, I believe, was extended for one year. When it terminated, no special arrangement was made and none now exists with the Miami Biltmore.

Q. Then it was at one time considered a health institution?

A. Yes, sir.

Q. Mr. Shaw, since the year 1937 you have levied special millages for other things other than those set up in your refunding ordinance, have you not?

A. Yes, sir.

Q. Can you give us the next time a list of the millages for each year that you have levied for things outside of your refunding ordinance, since 1937? Well, 1937, and since 1937; include 1937, when your refunding went into effect.

A. Yes, sir.

Q. Under your charter, I understand, Mr. Shaw, the City issues and sells tax sales certificates every year; is that right?

A. It does.

Q. Has that been done since 1937, every year?

A. Yes, sir.

Q. And is there an open sale held?

A. Yes, sir.

Q. Are they bid in sometimes by outsiders?

A. Yes, sir.

Q. And if they are not bid in by outsiders, then they are bid in by the City?

A. That's correct.

Q. And a 5% penalty, when it is bid in by the City, is added?

A. That's right.

Q. Or a 5% penalty is added in every case, whether bid in by the City or anyone else?

A. Yes, sir.

Q. Are those sales very voluminous to private persons?

A. No. There will usually be from 15 to 20 purchasers, varying from, in recent years, a maximum of Three to Four Thousand Dollars down to a minimum of what the certificate on one vacant lot may be.

Q. Mr. Shaw, I am not clear in my mind as to how you levied debt service taxes and other taxes prior to the year 1934. Your Schedule 14 shows them not divided. Were they levied by ordinance separately, or directed to be levied separately, or were they levied just blanketly, and if you had enough to pay your debts you paid them, and if you didn't, you didn't?

A. Our budgeting processes differed somewhat in the years—the individual years, before 1935; that is, including and prior to 1934. We were then faced with debt service requirements in some years running up to a Million and a Half, or Two Million, or Two Million and a Half Dollars. We levied in some of those years a lump sum debt service and contingent levy, and as you put it, used what was received for debt service, except that in some of those years prior to 1934 our collections were so small that the collection of operating millage was insufficient to operate the City, and that was given priority.

Q. You mean your total collections were insufficient to operate the City?

A. Yes, sir. No—well, I think that is true; a couple of years the total current collections were hardly enough to operate the City.

Q. And there was no particular provision made for debt service in those years?

A. No, sir.

Q. And there was no attempt to make a particular provision for debt service in those years?

A. It was impossible to make a particular provision for debt service in those years.

Mr. Warren:

I think that's as far as we can go on the cross examination until we got some of that other information, if the Court please.

(Thereupon, after consultation between counsel and the Master, the hearing was adjourned to 10:00 A. M. March 25, 1941, to be reconvened at the City Hall of the City of Coral Gables.)

In the United States District Court in and for the Southern District of Florida. Miami Division.

In the Matter of
The City of Coral Gables, Florida.
In Bankruptcy No. 1867-M.

This Cause came on for further hearing before the Honorable F. M. Hudson, Special Master herein, at 10:00 o'clock A. M. on the 25th day of March, A. D. 1941, at the City Hall in the City of Coral Gables, Florida.

There was present at said hearing on behalf of the Petitioner, the City of Coral Gables, Mr. Morton B. Adams, City Attorney; Mr. Ira C. Haycock; and Mr. D. H. Redfearn, of the law firm of Redfearn & Ferrell, of counsel

for the City; and Mr. G. N. Shaw, City Clerk. There was also present Mr. Edwin M. Clarke, of the law firm of Jennings & Watts, of Jacksonville, representing C. J. Root, a creditor; Mr. F. A. Berry, of the law firm of Bass, Berry & Simms, of Nashville, Tennessee, for the American National Bank of Nashville, Tennessee; and Mr. Stuart B. Warren, of the law firm of Wylie & Warren, of St. Petersburg, Florida, for the American National Bank of Nashville, Tennessee, Albert Roberts, Jr., and J. Howard Gould, creditors; and Mr. Joseph P. Lea, Jr., on behalf of Ed. C. Wright & Co., and Mr. Ed. C. Wright, in person.

Thereupon, the following proceedings were had:

(Upon the hearing being convened, several schedules were produced by the witness G. N. Shaw, which said schedules had been prepared and furnished to cover data called for upon the previous examination of the witness and the hearings had on March 3, 4 and 5, 1941.)

Mr. Berry:

We offer for identification at this time schedule prepared and submitted by Mr. Shaw, one being Bonds and Other Obligations Purchased, which will be marked for Identification as Defendant's Exhibit No. 8; the next being Analysis of Debt Service through transactions for first Default July 1, 1930, through fiscal year 1936-37, marked Exhibit No. 9 for Identification; the next being Analysis of Tax Sales and Redemptions, October 1, 1937, through June 30, 1940, marked No. 10 for Identification; and the next being Statement of Tax Millages, 1937 to 1940, both inclusive, marked No. 11, for Identification.— And, if the Court please, there is a note on No. 11 which explains the elimination of certain taxes, and further, a statement: "Realizing that to advance the tax rate beyond 22 mills would have a harmful effect upon tax col-

lectibility", and so forth, which we ask be stricken from the exhibit as a conclusion of the man filing it and not called for, and is one of the issues in this cause.

The Master:
You mean you ask that the quoted language be stricken?

Mr. Berry:
That last half of that, beginning with the word "Realizing", be stricken from the exhibit as not being responsive to the question, and a conclusion of the person preparing it, and one of the issues to be determined by Your Honor.

The Master:
Well, the motion is granted, but I will read it, nevertheless.

Mr. Berry:
For convenience I will refer to the exhibits I have offered for identification by number, and we will understand the exhibits are not yet filed, but offered only for identification.

835 Whereupon: G. N. SHAW was recalled as a witness on behalf of the Petitioner, and being still under oath, further testified as follows:

Cross Examination (Resumed).

By Mr. Berry:
Q. Referring to Exhibit No. 8, Mr. Shaw, the first name on that is Helen O'Connell, showing that $21,750.00 was paid to her. Was that amount paid in cash?
A. It was.

Q. And the bonds that you received had matured in 1931 and 1932, had they not?

A. They had.

Q. And they were delivered to the City when you made that payment?

A. I do not recollect each item. In many cases we received the refunding securities rather than the old securities.

Q. Well, did you in that case?

A. That I couldn't say, Mr. Berry. I would have to refer to the individual receipts for those items.

Q. Well, I am going to ask you to do that and if you paid Miss O'Connell, I want to know whether you paid her for the original bonds or the refunding bonds, and whether or not you issued the refunding bonds to the City of Coral Gables or to her. Can we do that right now?

A. I will have to go through my file there and dig those out; it will take some few minutes.

Mr. Berry:

Well, if the Court please, that was exactly what I was going into, whether these bonds were legally issued or not, and that's the very point of this, and I ask that that be done, and that we get through with that; and the others, too, while you are looking, Mr. Shaw.

A. I didn't have that noted as one of the items, Mr. Berry. Maybe I misunderstood you.

Q. Well, will you get that statement for us, please?

A. Yes, Mr. Berry. The only file information that I have on that would be the receipts I issued when I received the securities. Now those are, I am sorry to say, not all in one place. It would take some time to dig them out as to this entire list. I think that some of those receipts may be for the refunding securities that are shown in this list, but in effect, what happened was that the City bought the old obligation and refunded it to itself. That

would be the case wherever the data as to old obligations is shown in connection with items appearing on this list. Where there is no showing of the numbers and amounts of old obligations, it indicates that the City purchased the refunding securities in their present form.

Q. Mr. Shaw, have you a list of the exchanges of refunding bonds that you made for old bonds and coupons, including tax participation certificates?

A. We have no list, Mr. Berry; we have the record, of course, of each exchange made.

Q. Have you any record of making an exchange with Helen O'Connell?

A. No. In the case of Helen O'Connell, we purchased a judgment in the amount of $40,372.36, which had a refunding value as of January 1, 1937, of $39,375.00. We issued the refunding bonds and tax participation certificates for this $39,375.00 of refunding value to ourselves.

Q. Isn't it a fact that Miss, or Mrs. O'Connell, brought suit on the old bonds and got judgment?

A. That is correct.

Q. And she never did accept a refunding bond, did she?

A. Not to my knowledge.

Q. Then why did we have to look up this long record, if you knew that, Mr. Shaw?

A. You asked me, Mr. Berry, to get the whole list. I did not notice, when you asked me the question, that this was a judgment. Later, I noticed that.

Q. Then when you paid this judgment on 10-18-37, the City received bonds No. D-7130 to 7159, did they not?

A. That is correct.

Q. And they were old bonds?

A. No; those are the new bonds.

Q. What were the numbers of the old bonds that you received?

A. The old bonds represented were Nos. 1 to 10, of the issue of June 15, 1928, and Nos. 41 to 60 of the same is-

sue. These bonds, together with the interest on them, were in a judgment. The City never received the bonds, but received, I believe, an assignment of the judgment.

Q. And against that assignment of the judgment you issued to yourselves refunding bonds D-7130 to D-7159 in the principal amount of $15,000.00; is that correct?

A. That's correct.

Q. Now, what account did you put those bonds in of the City?

A. Those bonds were held by the general fund of the City to meet, as it would occur in the future, the cancellation schedule of Section 12 of Ordinance No. 269.

Q. Was there anything in the decree of the Court that directed the City of Coral Gables to issue those refunding bonds?

A. You mean in the decree of the Court in the case of Helen O'Connell?

Q. Yes, sir.

A. I believe not.

Q. Is there an ordinance directing the issue of those bonds against this judgment to themselves?

A. There is no ordinance so directing.

Q. Is there any statute of the State of Florida that you know of under which these bonds were issued?

Mr. Haycock:

To which we object; the Court will take judicial notice of any statutes of the State of Florida.

Mr. Berry:

I am asking him to point out his authority. He can point out the statute. I am not asking for a construction; I want to know if this witness knows of such a statute.

The Master:

The objection is overruled.

A. I do not know of any such statute.

Q. The next item on Exhibit 8 is the judgment of Henry A. Thies. The judgment was $58,802.59.

The Master:

Just a minute; that should be 54,000.

Q. $54,802.59.

A. Yes, sir.

Q. And this indicates that on 10-19-37 you paid $27,500.00 in cash; is that correct?

A. Yes, sir.

Q. Mr. Thies had not made a swap, or received refunding bonds, had he?

A. No, sir.

Q. Did you receive the bonds held by Mr. Thies, or were they canceled in Court?

A. They were canceled in Court.

Q. Did you pay any additional sum for interest on those bonds? Was $27,500.00 the total amount of cash paid to Mr. Thies?

A. That was the total amount paid to Mr. Thies.

Q. And that satisfied the judgment he had had rendered against you of $54,000 and some odd dollars?

A. As far as Mr. Thies is concerned. I believe Mr. Thies executed as assignment of that judgment for that amount.

Q. And those bonds were all past due at the time that you made that payment?

A. Yes, sir.

Q. And against that you issued to the City $20,000.00 of refunding bonds, Nos. D-7160 to D-7199?

A. That is correct.

Q. And without repeating it, would the same hold true about ordinances, statues and decrees that I asked you about in the O'Connell case, that there are none authorizing that issue?

A. That would hold true.

Q. Were those refunding bonds taken in the general fund of the City?

A. They were.

Q. And held as you have described the ones taken in the O'Connell case?

A. That is correct. This exhibit identified as No. 8 carries at its foot an explanation of the source of the funds from which each of the amounts shown in the first Dollar column was paid. In all cases except those designated by letter "E" and "Paid by City Trust Funds", the refunding securities which were issued are held by the City to meet the required cancellation schedule of Section 12 of Ordinance No. 269. In these cases designated by letters other than "E", some of the bonds have already been canceled in accordance with the requirements of the ordinance, to date. Those items designated by the letter "E" were received by the City's reserve or trust funds as a continuing investment of those funds.

Mr. Berry:

I wish to make this comment, that we do not agree that his interpretation of the ordinance is correct; that that is simply a statement of the witness' own interpretation, and that has been heretofore objected to and is to be later on passed on, and in allowing his statement in the record, we are not conceding that, but it is still subject to our objection.

Q. Mr. Shaw, referring again to Exhibit 8, the next name is Rybert Mortgage & Securities Corporation, who apparently obtained a judgment of $24,802.73, but they were paid $66,036.37, and the total shows that they had held bonds in the principal amount of $91,000.00, coupons which had matured or partially matured in the amount of $11,344.98, and interest on past due bonds not represented

by coupons of $1,742.50. Now, does that mean that they brought suit only on a portion of the bonds they held?

A. Yes, sir.

Q. And the settlement you made with them was voluntary?

A. The settlement we made with them was not voluntary, entirely, in that it disposed of an existing judgment which was to be submitted for a Writ for a spread levy, and a settlement of other bonds which were then past due and which were to be subjected to the same treatment.

Q. Well, each and every bond that was settled, either those in suit or out of suit, are on this exhibit, are they not?

A. Yes, sir.

Q. And that settlement was made through Mr. Exselsen?

A. It was.

Q. Was that settlement at any time ratified or confirmed or approved by the City officials or any City official of the City of Coral Gables?

A. By the City Commission, yes, sir.

Q. Will you point out the resolution approving that?

A. There was no resolution approving it at the time. These matters were approved by the Commission in conference, and later ratified by the acceptance of the audit of Mr. Exselsen's transactions.

Q. If I understand you correctly, Mr. Exselsen would make a settlement or a tentative settlement, and would come to the City and receive verbal approval, without any formal action being taken in a meeting; is that correct?

A. That is correct, sir.

Q. Now, you paid Rybert about 50% or more than that of his principal and interest, did you not?

A. A fraction over 50%.

Q. Then in settling with Rybert Mortgage & Securities Corporation you included interest as well as prin-

cipal in the amount paid in cash, did you not, and paid a percentage of that?

A. Yes. In the case of all these judgment matters we took into account the entire claim.

Q. Now, the amount for which you settled the three claims you have just mentioned, O'Connell, Thies and Rybert, was different, was it not?

A. You mean the relation of the payment to the aggregate of the claim?

Q. The percentage of cash paid on the total amount due at the time of payment was different in all three.

A. Yes, sir.

Q. And those three settlements were made by Mr. Exselsen and approved verbally at some unrecorded meeting of your City Commission?

A. Yes, sir, but I would like to qualify that remark about an unrecorded meeting, Mr. Berry. Actually, at the time, I kept memoranda of the terms of the suggested and the approved settlements but did not write up formal minutes. Upon the conclusion of the entire matter, the transactions were ratified by an audit, and acceptance of the audit.

Q. Well, there was no exact plan or formula of settlement which was adhered to at that time, but the best trade that you could make was the one you made?

Mr. Adams:

We except to the form of the question because it doesn't conform to the testimony. The matters being testified about are purchases of securities by the City, and not settlements. If Your Honor please, I make this objection here now to clarify this situation. From the trend of this cross examination it would appear that they are trying to develop the fact that the City settled and refunded these judgments on different bases, different percentages. What the City did was to purchase these securities at different

percentages, it is true, but they were not settlements and exchanges made under the plan; they were purchases of securities.

The Master:

I don't think the Master has the authority to dictate the form of counsel's questions. The objection is noted, but overruled. However, I would suggest that counsel bear in mind that objection and conform as nearly as possible to what Mr. Berry considers the situation. In other words, Mr. Berry has the right to put his interpretation, and so have opposing counsel.

Mr. Berry:

I would like to put in the record at this time, if the Court please, that we understand that the City of Coral Gables is urging that a plan of composition was promulgated in 1937 under—which, under the Act, must be fair, and the same settlement must be given to each of the creditors whose debts are affected by the plan, and I am undertaking to show that there was no plan at that time, but that when claims were asserted against the City, whether by suit or by claim or by presentation of them, that in each instance a settlement was made without regard to any existing plan, and I am asking the witness whether or not he can point out a plan and ordinance and statute, or anything else, under which the settlement—and I am using that as the broad sense that it was by issuance of the refunding bonds or by payment of the judgments or by payment of the claim itself, and that's the purpose of my questions at this time.

The Master:

Proceed.

A. Each of these cases was considered separately in the light of the possibilities and the necessities.

Q. Now, did you receive anything from the Rybert Mortgage & Securities Corporation for the $66,036.37 you paid to that company?

A. We received an assignment of the judgment shown in the first block of data pertaining to that company, on Exhibit 8, and we received the bonds, and interest coupons, and interest on past due bonds shown in the second such block of data.

Q. And in consideration of the assignment of the judgment you issued to your general fund $4,500.00 of refunding bonds?

A. That is correct.

Q. And for the bonds delivered, you received $45,500.00 of refunding bonds?

A. That is correct; together with the applicable tax participation certificates.

Q. The rest of the statement of your exhibit is correct as to that; I am not going into that detail.

A. That is correct.

Q. Mr. Shaw, the Exhibit 8 correctly reflects the bonds which were past due and those which had not matured at the time of the settlement, does it not?

A. It does, Mr. Berry, by the maturity date shown in the third column under the heading of "Old Securities Acquired".

Q. And you issued refunding bonds against the judgment and the bonds acquired, irrespective of whether they were matured or not matured at the time of acquisition?

A. We did.

Q. The next item is Fiduciary Council, Inc., $8,000.00, and under principal amount it says "$8,000.00 of judgment". What was their claim, Mr. Shaw?

A. Their claim consisted in the main of a judgment in the approximate amount of $130,000.00, of which we purchased an $8,000.00 portion, and purchased other bonds

held by that same company in the principal amount of $10,000.00 of the other bonds for $5,150.00. The partial purchase of the judgment being at par for $8,000.00, and in consideration therefor we received a modification of the terms of the spread levy by which the term was lengthened from six to twelve years, and by which the interest was cut from 5% to 3½%.

Q. Were the bonds of the par value of $10,000.00 set out in this exhibit included in any judgment at the time of this settlement?

A. They were not.

Q. And you re-issued for the $8,000.00 judgment purchased $4,000.00 of refunding bonds?

A. Yes, sir.

Q. And $5,000.00 of refunding bonds for the $10,000.00 of bonds purchased?

A. Yes, sir.

Q. Now, in the judgment, of which you purchased a portion to the extent of $8,000.00, was interest on the bonds included in that judgment?

A. Yes, sir.

Q. In the purchase of bonds for $10,000.00 there doesn't appear any interest. How was that handled?

A. The bonds were submitted to us for principal only. I assume—I have not checked—that the past due interest at that time was included in the judgment.

Q. Were the coupons attached to those bonds, or were they detached and retained by Fiduciary Council?

A. The coupons which had matured upon those bonds were included in the judgment which I have mentioned, in the amount of approximately $130,000.00, and the subsequent coupons which had not matured were delivered to us with the bonds.

Q. Then in the $8,000.00 that you paid for part of the judgment, interest was included?

A. From the record of the transaction, it appears that we purchased a portion of the principal in the judgment,

since we issued to ourselves bonds and tax participation certificates which would be applicable to the principal only.

Q. I will ask you now, Mr. Shaw, to please produce the assignment which you say assigns a portion of a judgment applicable to one particular portion of it.

A. I so produce it (Handing document to counsel). I have here the instrument, Mr. Berry, and find that it is styled a partial satisfaction of judgment. In my previous answers I was speaking only from recollection, except in this respect; my previous answers appear to have been correct, in that the instrument allocates the $8,000.00 to principal.

Mr. Berry:

If the Court please, I have examined the instrument submitted by the witness, which is made a partial satisfaction of judgment, and simply directs the Clerk of the Court to enter on his judgment records the notation of partial satisfaction, and to my construction it is in no sense an assignment, and I ask that Your Honor pass on it, and if it is so held, that the statements of the witness be stricken unless he produces another instrument. And, if the Court please, I object to the witness' construction, because it reads "the principal of that certain judgment" and not "principal of what makes up the judgment". I now submit this paper without filing, with permission of counsel, to Your Honor for construction, and if it is a partial satisfaction and not an assignment, and the witness has no other instrument on which he relies, I move that all of his references to an assignment be either stricken, or disregarded by Your Honor in arriving at a decision.

Mr. Haycock:

The City submits, Your Honor, that in the Court construing the instrument to him now that the Court also take into consideration Special Exhibit "I" introduced on

January 31, 1941, by W. Terry Gibson, as counsel for Fiduciary Council, as being a part of the same transaction and a parcel of the same transaction. In other words, our position is, Your Honor, that you can't construe this instrument without construing the entire transaction between Fiduciary Council and the City on the complete settlement.

The Master:
Well, it is clear to my mind that this instrument is not an assignment; it is merely a partial satisfaction, and if counsel for the Petitioner wish to put it in to be construed in connection with the Special Issue Exhibit "I", of course they have leave to do so. The motion to strike the testimony of the witness in regard to this is denied. It is left there for what it is worth.

Mr. Clarke:
May it please the Court, did you rule on the motion to strike the conclusion of the witness that that instrument refers to principal of old bonds rather than to principal of the whole judgment, otherwise it may be necessary to put the instrument in the record.

Mr. Adams:
We would like to have the instrument in, Your Honor.

The Master:
I did rule on that, and denied the motion to strike.

Mr. Berry:
I then ask that the instrument be marked Defendant's Exhibit 12 for identification at this time, with leave to substitute a copy if the City so desires.

Mr. Adams:.
That will be all right.

(Thereupon said instrument was marked as Defendant's Exhibit No. 12 for Identification.)

Q. Mr. Shaw, referring back to the O'Connell judgment, have you the instrument regarding that which you referred to as an assignment?

A. I have, Mr. Berry.

Q. Will you produce it?

A. I hand it to you.

Mr. Berry:

We ask that this instrument be marked for Identification as Defendant's Exhibit No. 13 at this time, being an Assignment of Judgment.

The Master:

Let it be filed for identification as Defendant's Exhibit 13.

(Instrument so marked by the Master.)

Q. Mr. Shaw, did you handle any of the dealings with Helen E. O'Connell, personally?

A. No, I did not.

Q. When was the actual payment made to Helen O'Connell?

A. My record shows October 18, 1937.

Q. This instrument designated "Assignment of Judgment" was acknowledged on August 9, 1937, was it not? (Exhibiting instrument to witness.)

A. Yes, sir, the instrument so shows.

Q. When was it delivered to you?

A. I believe on October 18, 1937.

Q. Why was it not filled in with the name of Coral Gables?

A. That was, I imagine, an oversight. The matter was put in our vault and has been there since.

Q. Is there any record of the receipt of this assignment on any minutes of the Commissioners of Coral Gables?

A. I believe not, Mr. Berry.

Q. Is this another case of where the Commissioners informally and verbally authorized this to be done?

A. Yes, sir.

Q. Will you give us the Thies assignment, now?

A. Yes, sir. I have here, Mr. Berry, an assignment by Henry A. Thies to Carl L. V. Exselsen, and a subsequent assignment by Carl L. V. Exselsen. The assignment by Exselsen was to the City, and was received by the City, but it has not been inserted in the instrument.

Mr. Berry:

I ask that the instrument designated "Assignment of Judgment", from Henry A. Thies, dated October 28, 1937, be marked for identification as Defendant's Exhibit No. 14, and the subsequent instrument executed by Carl L. V. Exselsen, dated January 24, 1938, be marked for identification as Defendant's Exhibit No. 15.

The Master:

It is so ordered.

(Said instruments were marked for Identification as Defendant's Exhibits 14 and 15, respectively.)

Q. You show payment to Mr. Thies on October 19th, do you not?

A. We do, Mr. Berry.

Q. And this assignment was not executed until the 28th of October, 1937, was it?

A. The assignment so shows.

Q. And the money used to pay Mr. Thies was the property of Coral Gables, and put in a special account of Mr. Exselsen as you have heretofore testified?

A. In part, Mr. Berry. You will notice that payment falls in two groups, $17,500.00 having been paid by Mr. Exselsen from the money placed in his hands; $10,000.00 was paid previously by the City from money obtained from the same source; the agreement to handle the matter with Mr. Thies had been reached at a date earlier than our final record date of October 19, 1937, and partial payments were made a short time before that.

Q. Well, every cent of the money he received was the money of Coral Gables and not the money of Mr. Exselsen?

A. That is correct.

Q. Why was the assignment by Mr. Exselsen, Exhibit 15, not made to Coral Gables, and made in blank?

A. I believe that all of them were surrendered to me in blank, and that we had simply failed to fill them in, and have retained them in our vault in the original form.

Q. Was it the intention to sell these judgments to a third party?

A. It was not.

Q. Is there any record of the Exselsen assignment being received by the City, or a trade with him in regard to it?

A. Other than the City's receipt to Mr. Exselsen, which simply acknowledges the receipt of that instrument, given over the City's signature.

Q. Now, have you the Rybert instrument that you referred to?

A. I have, Mr. Berry. I have an assignment by the Rybert Mortgage & Securities Corporation, by W. Terry Gibson, its attorney, under date of October 19, 1937; a further assignment by that company by J. P. Lea, Jr., its President, under that same date; and an assignment by Mr. Exselsen in blank, which was delivered to the City, which assignment bears date of January 24, 1938.

Q. Mr. Shaw, these two assignments to Mr. Exselsen are assignments of the same judgment to the same parties,

but executed by different representatives of the company, are they not?

A. That is correct, sir.

Q. And the one by Mr. Exselsen is also executed in blank for the same claim?

A. Yes, sir.

Q. Is there any record of the receipt of these assignments in the minutes?

A. Not in the minutes.

Q. The money that was used to pay the Rybert Mortgage & Securities Company was all the property of Coral Gables?

A. That's correct.

Mr. Berry:

We will not offer these in evidence. Of course, the City may do so if it sees fit.

Q. Now, is there any assignment or transfer to you other than delivery of bonds, of the remainder of the Rybert Claim?

A. No, sir; that transaction was concluded with the delivery of the bonds.

Q. Now, referring back again to Defendant's Exhibit No. 8, the claim of Fiduciary Council for $5,150.00, which was paid by Mr. Exselsen. Was there any assignment or transfer of that, or was that handled merely by the delivery of bonds?

A. Merely by the delivery of the bonds.

Q. And the money paid in those two instances was, as indicated, the property of Coral Gables?

A. Yes, sir.

Q. Now, referring again to Exhibit 8, there appears Leo K. Steiner, with a judgment of $14,879.51, which was apparently settled on October 19, 1937. There is a second judgment shown of $11,894.50; and a total amount paid him, which your exhibit reflects was paid by Mr. Exsel-

sen, which was $34,502.00. Did you pay him any amount in addition to the judgment which he had?

A. The exhibit shows three items under the name of Leo K. Steiner, the first two being the judgments you have mentioned, and the third being additional bonds not in judgment.

Q. At the time of the settlement what was the total amount of Mr. Steiner's claim?

A. In terms of the securities included, $54,000.00 of principal of bonds, $12,150.00 of interest coupons matured to January 1, 1937; and $630.00 of interest on past due bonds matured to January 1, 1937.

Q. A total of what?

A. $66,790.00.

Q. And he was paid in cash $34,502.00, was he not?

A. That is correct, sir.

Q. And that is a larger percentage than you have paid any of the other claims so far shown in this examination?

A. I think the percentages, Mr. Berry, are the amount paid to the amount accrued to the date of the transaction, and that shows the Fiduciary Council transaction, the Henry A. Thies transaction, and the Helen O'Connell transaction to be a greater percentage of payment than the Steiner transaction.

Q. Well, how much do you add to the sum of $66,780.00 for interest from 1-1-37 to October 19, 1937, the date of settlement?

A. In the case of the Steiner—?

Q. In the case of Steiner.

A. In the case of the Steiner judgment, those additions come to $3,444.79.

Q. That would make the cash payment a little less than 50%?

A. 49.13%.

Q. And in making that settlement in cash you took into account all of the accrued interest to date of settlement?

A. Yes. In making that settlement we took into account the then existing situation, and the percentage that I have named is based upon the total accrued value at the time of the settlement.

Q. Well, were the Steiner judgments assigned to you?

A. Yes, sir. The Steiner judgments were first assigned to Carl L. V. Exselsen by Leo K. Steiner, by W. Terry Gibson, his attorney, under date of October 19, 1937, which assignments were accompanied by assignments to Carl L. V. Exselsen on the same date executed by Leo K. Steiner, himself, and under date of January 24, 1938, Carl L. V. Exselsen executed assignments in blank which were delivered to, accepted by, and are now in the possession of the City of Coral Gables.

Q. Mr. Shaw, you have handed me six papers, the first four of which contain two duplicates assigning the same account, but by different persons, the second two being by Mr. Exselsen to "blank"; that is correct, is it not?

A. That is correct.

Q. They are in substantially the same form as the assignments previously submitted by you?

A. Yes, sir.

Q. The money paid was money of Coral Gables, the City?

A. It was.

Q. Were the additional claims of Mr. Steiner in any way assigned to you other than by delivery of bonds, as you have testified to heretofore, by any kind of an instrument?

A. No. I believe I previously stated, Mr. Berry, that the securities other than those in judgment in the Rybert matter, were not accompanied by any instrument. I find here that that is true in so far as the City is concerned, but I have assignments in duplicate by Rybert Mortgage & Securities Corporation, by its President, J. P. Lea, Jr., and a duplicate by the same corporation by its attorney,

W. Terry Gibson, assigning those securities to Mr. Exselsen.

Mr. Berry:

As we have filed the other papers regarding this, I will now tender those for identification as Defendant's exhibits, being the assignment by Rybert of the two judgments and all other claims against the City. I will tender the one instrument executed by J. P. Lea, Jr.

(Said instrument marked for Identification as Defendant's Exhibit No. 16.)

Q. Was this contract in any way ever assigned to the City of Coral Gables?

A. I find no assignment in my files.

Q. And you have heretofore testified that all of the money paid to the Rybert Mortgage Corporation was the City's money?

A. That is correct, sir. I might say that the securities which were involved in that assignment to Mr. Exselsen were delivered to the City together with the assignment that he had received from the Rybert Mortgage & Securities Corporation.

Mr. Adams:

May I request the witness to look at the assignment that was referred to just recently of a Rybert Mortgage & Securities Corporation judgment, the first two assignments to Mr. Exselsen and one assignment of the judgment to the City in blank, and ask if that assignment of the judgment is not the same judgment referred to in this Exhibit 16, in Law Case No. 16751?

A. I did not read Exhibit 16 when submitting it, Mr. Adams. (Examining exhibit.) That is correct, Mr.

Adams; the assignment from Rybert Mortgage & Securities Corporation to Mr. Exselsen, marked as Exhibit 16, is a dual assignment of the judgments, and the $91,000.00 of bonds and related coupons and in so far as the judgments are concerned, would be covered by the later assignment by Mr. Exselsen delivered to the City.

Mr. Adams:
Well, may they now be marked Defendant's Exhibits 17, 18 and 19 for Identification?

Mr. Berry:
Oh, yes; we consent that they may be so marked for identification as defendant's exhibits.

(Said instruments referred to thereupon were marked as Defendant's Exhibits 17, 18 and 19, respectively, for Identification only.)

(At this juncture of the proceedings a recess was taken, from 12:20 to 2:00 P. M., at which time the witness G. N. Shaw resumed the stand and the cross examination was resumed):

By Mr. Berry:
Q. Mr. Shaw, you issued refunding bonds to the amount shown on this Exhibit No. 8 in the Steiner case, did you not?
A. Yes, sir.
Q. Now, the next one on this Exhibit 8 is Craig Allen & Company, which Mr. Exselsen seems to have purchased for $4,800.00. Was there a contract regarding that?
A. Not to my knowledge.
Q. And the claim that was purchased were bonds in the principal amount of $12,000.00, and coupons in the amount of $5,040.00?
A. That is correct, sir.

Q. And then you issued $6,000.00 of refunding bonds to yourself, that is, to the City of Coral Gables, general fund?

A. That is correct.

Q. Why, in that instance, did you issue more bonds than you paid for the claim?

A. Because the refundable portion of the claim consisted of $12,000.00 of principal. Under the plan, that was the equivalent of $6,000.00 of refunding bonds.

Q. Craig-Allen & Company had not exchanged their bonds prior to the purchase, had they?

A. They had not.

Q. And the same would be true about any records pertaining to that being on your minutes, and any records regarding this re-issue, as to the former issues we have discussed this morning?

A. Yes, sir.

Q. Was there any reason why Craig Allen & Company were paid a less amount than some of the others that we have discussed?

A. That would be difficult to say, Mr. Berry, except that others that we have discussed were coupled with, or consisted of judgments, and the immediate rights of enforcement, naturally they would command a higher price.

Q. Then you paid the man who brought suit more than the man who didn't; is that it?

A. We had to.

Q. There was no reason why Craig Allen & Company couldn't have brought suit, was there?

A. On a portion of that claim, none whatever.

Q. Now, take the next one, Walter B. Rogers; Bonds, $20,000.00; it looks like interest coupons, $5,432.50; and past due interest, $810.00. That was settled for $7,500.00. Was that all that you paid Mr. Rogers?

A. Yes, sir.

Q. Did you give him any other thing of value?

A. No, sir.

Q. He did not exchange his bonds?

A. No, sir.

Q. And you re-issued bonds and TPCs in the amount shown on the exhibit to the general fund of the City of Coral Gables?

A. That is correct.

Q. The next name is Mr. Ed. C. Wright. You paid him $26,240.00. Now, this exhibit shows a total of the principal amount, coupons, and interest on past due bonds, of $53,-781.25. Now, in that settlement did you take into account interest from January 1, 1937, to November 8, 1937, when you made the settlement?

A. That interest was probably taken into account in the purchase of that, although it is not stated in these figures. The purchase was made eight months after the end of the interest period included herein, and naturally that subsequent interest on these past due bonds was a factor of consideration when we purchased this claim. You will—

Q. Well, the amount paid—

A. Pardon me; I was going to complete that.

Q. Yes.

A. You will note that all of the bonds here were past due, and the interest shown is past due. There would have been approximately $1,600.00 of other interest accrued in addition to that shown, all of which would have been a possible basis of immediate suit.

Q. And you paid him what per cent. of his claim, Mr. Shaw?

A. 46.99% upon the then accrued total value, although I believe the basis of the purchase was 64% of the face of the principal amount included.

Q. And you issued refunding bonds and TPCs as shown on the exhibit to the general fund of Coral Gables?

A. Yes, sir.

Q. And the same questions about records or ordinances or receipts would apply there?

A. Yes, sir.

Q. There was no transfer other than delivery of bonds in that case, was there?

A. That is all.

Q. There was no written agreement or anything of that sort?

A. No, sir.

Q. The next is M. Blain Cochrane, settled November 10, 1937, for $1,277.09, being a total principal of $3,000.00, total coupons of $390.00, total past due interest of $450.00. Now, why was the percentage paid Cochrane different from that paid Wright when that was all past due and suit could have been brought?

A. I should say that Mr. Cochrane was willing to accept another basis.

Q. In other words, you made the best trade you could on these various settlements?

A. Evidently so.

Q. And the issuance of refunding bonds and TPCs and the records are the same as in your preceding answers?

A. Yes, sir.

Q. The next is Vincent Doherty, October 26, 1937, who was paid $195.00. There seems to have been nothing but coupons in that, though the numbers of two bonds are given. Why is that, Mr. Shaw?

A. In order to show the bond from which the coupons were detached.

Q. And these were coupons No. 7 and 19?

A. Yes, sir—7 to 19.

Q. Seven to 19?

A. Inclusive. I might say here that this schedule, where it has a dash or a hyphen between numbers, indicates single numbers; a bar, as is used in fractions, indicates as in sequence, both inclusive.

Q. Now, is that the only case that you set out where you paid cash for past due coupons?

A. Another case appears as of December 3, 1937, under the name of Vincent M. Doherty, in which we paid $848.70 for $2,070.00 past due coupons.

Q. Are these the only two cases, then, where you paid cash for past due coupons?

A. I am looking through here now (examining document). Another case appears under date of October 12, 1938, in the name of Robert H. Cook, Inc., in which we paid $60.00 for $240.00 of past due interest coupons.

Q. Is there any provision in the plan as adopted in December 23rd, 1936, as amended in July 30th, 1937, by the two ordinances referred to, which authorizes, permits or directs a payment in cash for past due coupons or past due interest?

A. There is not.

Q. The entire authorization which existed at the time was the payment of interest in TPCs, was it not?

A. That is correct, sir.

Q. The City of Coral Gables issued tax participation certificates to its general fund for the total amount of the coupons acquired, did it not, as your exhibit shows?

A. It did.

Q. Now, the next entry on Exhibit 8 is the same Mr. Doherty, who was paid $14,850.00 for $30,000.00 principal amount of bonds, $7,025.00 of coupons, $1,855.00 of past due interest. Was that amount paid from the funds of Coral Gables, as shown on the exhibit?

A. Yes, sir.

Q. And the refunding bonds and TPCs were issued as shown thereon?

A. Yes, sir.

Q. And there were no records regarding it other than you have testified to?

A. No, sir.

Q. In other words, that would be the same as the others?

A. Yes.

Q. And on the next page, again Mr. Doherty is paid $848.70 for unpaid coupons amounting to $2,070.00, which apparently were replaced by tax participation certificates for the face amount of the coupons. Your answers regarding that would be the same as your answers heretofore were regarding Mr. Doherty?

A. Yes, sir. Mr. Berry, in order to prevent any confusion in the record, this Vincent M. Doherty is an individual in West Palm Beach, and has no connection with the Doherty that has been previously referred to in the purchase of our tax sales certificates.

Q. Mr. Shaw, in an attempt to shorten the examination, your exhibit reflects a settlement made with Mr. Shantz, and Mr. Reif, and Mr. Krickl, with Mr. Sims and with Mr. Rhodes, Charles A. Day & Company, and E. B. Murray. Now, each of those settlements was made with the money of Coral Gables, was it not?

A. That's correct.

Q. And the details of each of those settlements, the amount paid and the amount settled for, is reflected correctly in the exhibit?

A. Yes, sir.

Q. With the possible exception that you took into account interest from January 1, 1937, to the actual date of settlement, which you have mentioned heretofore?

A. Yes, sir.

Q. And the amount of bonds and TPCs issued to Coral Gables is shown on the exhibit?

A. Yes, sir.

Q. And in each of those instances it was taken into the general fund, and not into a trust fund?

A. Yes, sir.

Q. Now, the next settlement is Ellen Hepkins, which shows a judgment of $13,313.67. What was that judgment for?

A. That judgment was on a purchase money note involving some land, the same land in Salvador Park that I described in connection with the McGuire—the Sarah McGuire transaction, in our last hearing.

Q. And what did you pay in satisfaction of that judgment?

A. The amount you have mentioned, $13,313.67, is the face of the judgment. The accrued value at the time of the settlement was $17,231.68. We paid $4,231.68 in cash, derived from the sale of tax sales certificates to the Coral Gables Development Company, and gave $13,000.00 par value of the refunding bonds. $6,500.00 of those refunding bonds were those applicable to the claim under our refunding ordinance, and the other $6,500.00 were taken from bonds which we had purchased in the McGuire transaction and which I have previously described. That has been difficult to set up here. You will notice in the refunding security columns we have shown the issuance of certain bonds to the creditor, giving the numbers of those bonds; we have also shown the receipt by the City of the bonds applicable to this claim, which amounted to $6,668.81, and the receipt by the City of the tax participation certificates. The numbers of the bonds given, you will observe, include all but one of the bonds as shown applicable to the claim and received by the City, and also include a portion of the bonds shown in the next lower line as being received from the Sarah McGuire transaction.

Q. Now, Mr. Shaw, what numbers of bonds—I'm speaking of refunding bonds—did Mrs. Hepkins retain in this settlement?

A. The numbers shown on this schedule as "Less bonds delivered to creditor", which are 8361 to 8373, inclusive; 7409 and 7410; 8153 to 8161, inclusive; 8192 and 8196.

Mr. Clarke:

Who is the creditor? McGuire?

A. No; that's Hepkins.

Mr. Berry:
Hepkins, we are talking about.

Q. Well, did the City retain any of the bonds issued as refunding bonds in that settlement?
A. Yes, sir, the City retained Bond No. 8374 in the amount of $168.81.
Q. And that is the only bond the City received and retained?
A. That is correct.
Q. And the TPCs, who received those?
A. The City.
Q. So that that judgment of Mrs. Hepkins' was satisfied?
A. Yes, sir, that judgment was satisfied (handing document to Mr. Berry).

Mr. Clarke:
Mr. Shaw, do I understand correctly that she got in cash and bonds the exact face amount of principal and interest due on her judgment?
A. Yes, sir.

Mr. Clarke:
That's the plan I want to work under.

By Mr. Berry:
Q. Has this satisfaction ever been entered of record discharging that judgment?
A. I couldn't say, Mr. Berry. Do you know, Mr. Adams?

Mr. Adams:
Well, this instrument will show for itself. (Examining document) No, I guess it hasn't.

Mr. Berry:
Well, I don't think that's material.

Q. Now, the Sarah McGuire judgment was $71,965.50. Now, what was paid in satisfaction of that judgment? The sum of $6,965.50?

A. That was paid in partial satisfaction.

Q. Is there a written settlement on that, Mr. Shaw?

A. Yes, sir; and I think we already have it in the record. We went into that at some length on the last hearing. The written agreement regarding that has heretofore been filed in this record. On this McGuire matter, which was in effect an exchange for refunding securities, with certain other provisions, including an escrow repurchase arrangement, and the re-purchase by the City of certain of the refunding securities, we have only shown on this schedule that part of the transaction which concerns the re-purchase of those refunding securities and the amount paid therefor.

Q. But passing entirely from McGuire, has the City in its possession refunding bonds acquired through that transaction, either originally re-issued to yourself or re-purchased under the escrow agreement?

A. It has.

Q. The amount shown on this Exhibit 8?

A. The amount shown on this Exhibit 8, both at the point to which we are now referring, and at a later point at the end of the schedule which shows the $2,000.00 of par value of bonds purchased each year in accordance with the agreement.

Q. I believe you have heretofore testified regarding the Ragan settlement—the Ragan judgment, and the settlement of that?

A. Yes, sir.

Q. And the Exhibit 8 correctly reflects the settlement that was made there?

A. It does.

Q. And the City received and retained the $15,000.00 of bonds and the TPCs, but I believe from your initial "E" following it, that is in a trust fund?

A. That is correct.

Q. Was the Ragan judgment satisfied?

A. No, sir; it was assigned to the City.

Q. Have you the assignment?

A. I have the assignment here (producing same).

Q. This is an assignment to "blank", and is dated September 10, 1936, and is in the usual from of such assignments, is it not?

A. Yes, sir.

Q. Now the judgment of Avenius, Pesik, and Farson is also a matter which you testified several days ago concerning, is it not?

A. Yes, sir.

Q. And that, again, is one that was settled from a trust fund, and the trust fund holds, now, the $15,500.00 of refunding bonds and $25,240.00 of TPCs?

A. Yes, sir.

Q. The record here reflects substantially what you testified to the other day, does it not?

A. That's correct.

Q. The next is Robert H. Cook, and the date is given as 5-38. What does "5-38" mean?

A. That is a rather indeterminate date, Mr. Berry. We put certain funds in escrow in the bank for the purchase of refunding securities. May, 1938, is the commencement of the escrow, and we do not have in our records the exact dates of the deliveries of these blocks of securities which were purchased.

Q. Well, does that mean May, 1938?

A. Yes, it commenced in May, 1938; yes, sir.

Q. Why did you owe Robert H. Cook, Inc.? There is nothing on this exhibit to show.

A. We did not owe anything to Robert H. Cook. This escrow was made for the purpose of purchasing refund-

ing securities which we had arranged with him to be purchased for our account. These are straight purchases, and are not settlements of previous indebtednesses.

Q. Did you have a written agreement with Cook?

A. The escrow agreement was in writing, I believe.

Q. Will you produce it?

A. I have sent for the copies, Mr. Berry, and will produce them later.

Q. Passing that for the time being to something else until the production of the copies, I see the name of Harrison McCready & Company between two of the names "Cook". What was that claim? Was that just on a bond?

A. That was the purchase of one old bond of the issue of June 1, 1929, and the past due interest coupons, amounting to $365.00, related to that bond.

Q. And that was handled as you have heretofore testified, and as shown on this exhibit?

A. Yes, sir.

Q. The items referred to as A. B. Morrison & Company, and of which there are two, Florida National Bank & Trust Company, represent, I believe, purchases of old bonds for the amounts which are shown in the exhibit?

A. Yes, sir.

Q. And they were handled in the same way as the cases I have asked you about heretofore on this exhibit?

A. Yes, sir.

Q. Excepting the judgments, of course.

A. Yes, sir.

Q. The next one is Robert H. Cook, Inc., who was paid $60.00 for $240.00 worth of coupons. That is the one you have mentioned heretofore?

A. It is.

Q. The next is a Cook item, which is apparently the purchase of an old bond, with the detail of the transaction; is that correct?

A. That is correct. And I might state that the interest coupon transaction to which you have just previously re-

ferred was treated as a part of this last transaction in the issuance of the new certificates in the last two columns of the exhibits.

Mr. Clarke:

What was the reason for that? The coupons do not seem to be off of the bond.

A. It was done purely to simplify our record and make one transaction of the two items.

Mr. Clarke:

I see.

By Mr. Berry:

Q. The next item is the W. W. Blount judgment, settled March 8, 1939, for $3,000.00, and states the principal amount was $15,063.44. What is that, Mr. Shaw?

A. That was a personal injury judgment held by Mr. Blount as one of the second series obligations, and in this case the purchase was made by the trust funds.

Q. When was that judgment rendered?

A. To the best of my recollection, Mr. Berry, in 1932.

Q. And it was finally settled in 1939?

A. Yes, sir.

Q. During that period from 1932 to 1939, was the judgment ever presented to the City, or any levy made?

A. I do not recall any, Mr. Berry. I believe that the judgment was in appeal a great part of that time. Mr. Adams can clear up that point.

Q. Well, I was speaking of when the judgment was rendered; I meant final judgment, and not the first trial of the case.

A. I don't remember the date of the final judgment. I do have the original date here; that was May 25, 1933, instead of in 1932.

Q. Well, Mr. Shaw, as this exhibit shows, that entire claim was settled for $3,000.00, and you issued to your City trust fund refunding bonds in the principal amount of $7,531.72, and TPCs for $11,865.32.

A. Yes, sir.

Q. And there were no bonds in that transaction prior to the issuance of the refunding bonds to yourself?

A. No, sir.

Q. The next is a Cook transaction. Is that one of the escrow transactions?

A. I am not sure about whether that is one of the escrow transactions. I had better reserve my answer until we get the agreement and see what the amounts were.

The Master:

You are referring to the Cook item, aren't you?

A. Yes, sir.

Q. On March 27, 1939, there was paid to A. B. Morrison & Company, $716.00 from a trust fund that seems to have been from a $1,000.00 bond which matured in 1930, and interest on the bond of $334.58. Was that simply a purchase of an old bond?

A. Yes, sir, by the trust fund, and then the issuance of the new securities for the old bond, and the accumulated interest issued to the trust fund.

Q. Now, the next two Morrison & Company transactions, what do they represent, Mr. Shaw?

A. The purchase of refunding bonds in the amounts shown in the "Refunding Security" columns.

Q. What price did you pay for those refunding bonds—each bond?

A. On a flat basis, Mr. Berry, approximately 65.7, in the first case of the purchase of $9,421.64 of the bonds; and in the second case, approximately 66.7.

Q. They were paid for out of the general funds of Coral Gables?

A. They were.

Q. Were those bonds canceled?

A. They were reserved to meet the cancellation schedule. Whether they are a part of the bonds which have previously been canceled, I do not know from the records before me.

Q. The point I am making, they were purchased from general funds and came into your hands but were not canceled at that time.

A. No, sir.

Q. And if they have been canceled, they have been canceled in accordance with your agreement in the refunding to cancel so many a year?

A. Yes, sir.

Q. Was there any advertisement for tenders of bonds when this purchase was made?

A. Not in those cases, no, sir.

Q. Why did you select Morrison & Company as the person from whom to purchase?

A. The bonds were offered to us and appeared to be a good buy, and at that time we had sufficient funds to make the purchase. The bonds were not purchased under the provisions of Ordinance 269, and therefore were not subject to the requirements for advertisement or call for tenders set up in that ordinance.

Q. And at the time that those payments were made, holders of defaulted bonds had previously made demand on you for payment and been refused, had they not?

A. Some had been refused, yes, sir.

Q. What is the Dade County transaction? It seems to be a trust fund transaction.

A. Perhaps I can clear up the Dade County, the item of March 31, 1939, the A. B. Morrison & Company item of April 6, 1939, Gamewell & Company, of January 16, 1940, and City of Miami, of May 13, 1940, in one explanation. We had outstanding as a result of our settlement certain fractional bonds issued for claims in irregular amounts.

These were registered, and required considerable extra routine work in the payment of semi-annual interest. The trust fund purchased these fractional bonds and later exchanged with the general fund on a par-for-par basis with a cash adjustment of any irregularity in amount, in order that these fractional bonds could be eliminated from our books, reducing our transactions to the $500.00 units.

Q. Now, this Cook transaction of December 15th, would that be under the agreement to be produced?

A. No, sir.

Q. What is that, Mr. Shaw?

A. That is the purchase for $1,800.00 of $3,000.00 of old bonds and $1,170.00 of related past due interest coupons to I-1-37, for which there was issued to the trust fund $1,500.00 of refunding bonds, and $2,670.00 of tax participation certificates.

Q. Now, there were a good many other old bonds demanding payment at the time that you took up the Cook bonds on that basis?

A. I do not know of any specific demands at that time.

Q. Wasn't Ed. C. Wright & Company and the American National Bank asking payment around that time?

Mr. Haycock:

We object, Your Honor, to this line of questioning unless it can be shown that these coupons were presented to the City at the time these purchases were made.

The Master:

Well, I presume that's what Mr. Berry is trying to show. The objection is overruled.

A. I do not recall any specific demand for payment on the part of Ed. C. Wright & Company until a date in the latter part of December, 1939, when a suit was filed upon certain interest coupons which we had previously thought

to be those of Ed. C. Wright & Company but which were sued upon as being the property of the American National Bank of Nashville, Tennessee. Prior to that time Mr. Wright's contacts, so far as I remember them, were in the nature of attempting to secure some refunding of his claims.

Q. Are you distinguishing between a demand for refunding of his claim and a demand for payment, Mr. Shaw?

A. Yes, sir.

Q. Then he had made a demand for refunding?

A. Not a demand. He had conferred several times with the City Commission, as I have previously testified.

Q. Well, wasn't those negotiations going forward over the period of all of December, 1939, and some months prior thereto?

A. Those negotiations had occurred intermittently for some time prior to that date.

Q. And during that period you were buying other old bonds at prices that you yourself fixed; is that correct?

A. That is correct. I might point out, Mr. Berry, that in the case immediately in question, the purchase of bonds from R. H. Cook & Co., the purchase was made by the trust fund, to which neither Mr. Wright, nor the American National Bank, nor any other creditor, had any claim.

Q. Now, on the last sheet of this exhibit, "Bonds and other obligations purchased", you show first $2,500.00 of bonds that come out of revolving bond account. What was that, Mr. Shaw?

A. You are looking at the refunding bonds?

Q. Yes; and amending that question; it shows that in 1935, $1,250.00 was paid from a trust fund for $5,000.00 principal amount of bonds, $750.00 of coupons, and $1,-050.00 of interest, which seems to be interest to 1-1-37,

resulting in $2,500.00 of refunding bonds being issued. Will you explain that transaction?

A. Yes, sir. About 1932 the City set up a revolving bond fund in its trust or reserve funds for the purpose of making possible the adjustment of assessment liens and certain old high delinquent taxes. The City purchased bonds in this revolving bond fund account of the trust fund, and held them, and accepted tax and assessment lien settlements based thereon, very much as is the practice in the offices of the Clerks of the Circuit Cour. in certain cases. This practice was suspended about 1935, and at that time $5,000.00 of the bonds and the related interest coupons were still the property of the trust funds in this revolving bond fund account. After the effectiveness of the refunding plan, this residue of old bonds was refunded to the trust fund, which was proper, since it was the remainder of an asset purchased out of trust funds. The price that we have shown in this exhibit is an average price obtained from scanning the transactions of this revolving bond fund account, since we do not know exactly the price of the particular bonds that were remaining at that time.

Q. This schedule shows five bonds that matured July 1, 1933. They were held in this trust fund of the City of Coral Gables from the date of purchase until the date of exchange, which must have been not earlier than 1937; is that correct?

A. That is correct.

Q. Now, the next is $6,000.00 of bonds marked Everling-Cornman, which are, I presume, the purchases you have testified to in the McGuire transaction.

A. Yes, sir.

Q. The next is an item that shows Cash, 0431,526.38, with a principal amount of bonds, unpaid coupons, interest on bonds, resulting in $479,198.98 of refunding bonds. Will you explain what that is, Mr. Shaw?

A. That is simply the total of the transactions detailed above. The cash of $431,526.38, plus the refunding bonds of $13,000.00 par value, comprised the total consideration of all of these transactions. The columns under "old securities" show the totals of old indebtedness, principal and interest, acquired therefor; and the amounts of $479,-198.98 of refunding bonds and $438,746.92 of tax participation certificates are those which were issued to the several funds of the City in exchange for the old securities or in part those which were purchased directly by the several funds of the City as refunding securities.

Q. Does that include the purchases made by Exselsen?

A. Yes, sir.

Q. Does it include the purchases made by Cook?

A. Yes, sir.

Mr. Clarke:

It does include the trust fund, too?

A. Yes, sir; that is all purchases.

Q. Then, in brief, that means that after the sale of your delinquent taxes in 1937, together with various special levies and general funds, you expended in cash $431,526.38 plus a certain amount of TPCs?

A. Yes, sir; the amount that I have stated.

Q. When these bonds came into your hands, either new bonds or old bonds, they were not cancelled, were they, except in the case of old bonds canceled when refunding bonds were issued?

A. That is correct.

Q. Now, there is an item "Less Coral Gables Development Company, in accordance with agreement", it looks like, "$200,000.00 TPCs delivered to them". What is that item?

A. Under our contract of sale of October 11, 1937, we were to deliver to the Coral Gables Development Company, in addition to the tax sales certificates and the tax deeds to the Mahi Shrine tracts, $200,000.00 of the tax

participation certificates which would be secured by the City in the use of the consideration which that company paid. This is shown here in part to reconcile the total amount of bonds and tax participation certificates purchased, with those remaining open on our books as of June 30, 1940.

Q. Now, what is the transaction with E. C. Hodge? It doesn't change the total amount of refunding bonds.

A. No, sir. E. C. Hodge had $4,000.00 of par value of second series bonds. We exchanged with him $4,000.00 of first series bonds; the par value of the transaction was the same. He simply asked us to exchange out of this cancellation fund, out of these City owned bonds, the first series for the second. The City neither gained nor lost in the transaction.

Q. This shows that you have canceled out of the bonds acquired the par amount of $144,198.98. Is that the exact amount that you are required to cancel under the refunding plan? The minimum amount?

A. Slightly in excess of that amount, since we added to the cancellations some of the fractional bonds which I have already mentioned, in order to get them out of the way.

Q. But outside of the fractional bonds, it is the minimum amount required by the plan?

A. Yes, sir.

Q. Have all of the old bonds which the City of Coral Gables has acquired in any way, been canceled?

A. Yes, sir.

Q. Now, you have exhibited to us, I believe, two satisfactions of judgments. I will ask you if either of those have ever been filed of record and the judgments satisfied?

A. The satisfaction in the O'Connell matter showed no notation of its recording, nor does the satisfaction in the case of Fiduciary Council, Inc., but in this latter case a

stipulation which was filed in the Court contains an account of the payment of $8,000.00 and its application upon the judgment, and to that extent I believe the matter is recorded.

Q. But no formal satisfaction of the judgment has been entered in Court, to your knowledge?

A. I believe not.

Q. Now the various assignments of judgments to Coral Gables, have any of those been entered of record?

A. I believe not.

Q. Mr. Shaw, in regard to the refunding bonds which are held as an asset by the City of Coral Gables, either in the general fund or a trust fund, what disposition is made of the coupons as they mature?

A. As the coupons mature they are collected through regular channels. As a matter of fact, this is the source of some of the purchases we have discussed dating since about 1938.

Q. Then in figuring the amount of debt service since 1937, you have included in the amount of bonds to be serviced the $479,198.98 of bonds held by the City of Coral Gables, but reduced each year by cancellation, as you canceled them?

A. That is correct.

Q. Outside of the bonds held in trust funds—I am referring to those in the general account—I ask if there is any special pledge or lien on those bonds to any creditor of the City that you know of?

A. There is one, Mr. Berry, except the City's allocation of those bonds to the cancellation schedule set up in Section 12 of Ordinance 269.

Q. Passing from Exhibit 8 until such time as we have the Cook contract, which we may want to ask questions about, and referring now to Exhibit 9, this shows that in 1930 and 1931, on December 1st, you paid interest amounting to $9,420.00, and on January 1st, $44,610.00. Do you know to whom that interest was paid?

A. That interest, Mr. Berry, was paid through the regular then existing channels for the payment of interest coupons on the special assessment bonds. We had at that time a fund known under our Charter as "Sinking Fund A", which received all of the collections of special assessment liens for streets and sidewalks, and which was applicable only to the payment of principal and interest of the issues of July 1, 1926, June 1, 1928, June 1, 1929 and July 1, 1930. At the time of our default we had a balance in that Sinking Fund "A", and funds later accrued to that Sinking Fund "A", and so long as possible, they were used for the payment of the maturing interest on those specific issues. That same explanation, I believe, is true of the payment of the principal of June 1, 1931, on the issue of June 1, 1928, although in that case the bonds were presented for payment by the Coral Gables Bondholders' Protective Committee.

Q. Was the special levy for those bond issues dropped after that time and no longer levied?

A. That was not a levy. That represented specific special assessment liens put on, I believe as of September 7, 1926. There were never any tax liens for those securities, as such. The City shortly thereafter commenced foreclosure proceedings upon the unpaid assessment liens, and met very severe resistance, and the liens were later declared by the Supreme Court to be invalid. During all of the time of that suit, of course, there was little if any activity in the payment of assessment liens, except that the City did, through its revolving bond fund, secure the settlement of some through the medium of exchange of securities.

Q. Now, the next payment that's shown here is to the Protective Committee, and shows interest coupons, various, past due, and shows payments for the years 1930 and 1931, and through the years 1936-37, but no payments to any others except by mandamus suits during any of those years. Now, why was that, Mr. Shaw?

A. I might say that the Bondholders' Protective Committee was more diligent in seeking payment of its items, and secured the payment of any available funds, leaving little if any funds for others.

Q. Then during that period you made interest payments, other than those you detailed and other than those as a result of suits, exclusively to the Protective Committee?

A. Not exclusively, no, sir.

Q. Well, to whom else did you make voluntary payments?

A. This schedule shows certain other items, particularly in the items headed "Notes, accounts and judgments other than bond and bond interest", upon which the creditors had at an early date agreed to enter the City's refunding plan, and—

Q. Well, that isn't what I asked you, Mr. Shaw. I asked you what other interest payments you made during that period other than as a result of mandamus suit, and what you are referring to are notes, accounts and judgments other than bonds and bond interest. I want you to exclude those.

A. My answer, then, was incorrect. I do not believe that the City made any voluntary payments during that time. All of these were represented by the presentation of past dust interest coupons at a time when money was on hand and allocable, and therefore subject to the demands.

Q. As a matter of fact, Mr. Shaw, weren't those bonds and coupons held in New York, and didn't you make remittance as you had funds, to New York, to take up coupons?

A. That is correct, sir, but there was a standing demand.

Q. And they were not presented to you here.

A. In many cases they were.

Q. Now, you say a standing demand. What was the standing demand?

A. A standing demand by the Committee for the payment to apply upon the many Hundred Thousands of interest coupons which it held.

Q. And didn't you agree that you would make payment, as you did, with the Committee?

A. There was an understanding to that effect. As a matter of fact, Mr. Berry, the City was attempting to secure the greatest possible spread of its available money, and the medium of the payments to the Bondholders' Committee was the best by which that could be done. The Bondholders' Committee during a large part of this time held over 80% of our debts.

Q. Now you don't mean to state, Mr. Shaw, that during the period from 1930 until 1937, that no one except the Protective Committee presented bonds or coupons here for payment, either through a bank, or directly, or through attorneys?

A. No, sir. This statement shows a few other bonds presented for payment.

Q. Now, didn't the Blackstone Corporation present their coupons for payment?

A. I do not recall any presentation. I recall the mandamus. I don't recall any informal presentation.

Q. Well, did you regard a law suit for the collection of those something other than a continuing demand?

A. No.

Q. Then there were other continuing demands?

A. That is correct.

Q. And nevertheless you paid the Protective Committee and not the other people demanding?

A. Yes, sir. Continuing my previous explanation, we very naturally gave preference to the demands of those who were obviously willing to meet the City's situation, and attempted not to provide with funds others who were

suing the City and showing a tendency to repeatedly sue the City.

Q. Now, when you finally got up your plan in December, 1936, does that plan make any provision to equalize the holders of coupons outside of the Bondholders' Committee with coupon holders who had deposited their bonds?

A. No, sir.

Q. And that means that the Bondholders' Protective Committee will receive $500.00 in money that the holders will not receive the equivalent of?

A. That is correct; together with the Blackstone Corporation, Laura Tucker, W. T. Cox, and the other such items shown on this page.

Q. Mr. Shaw, were these coupons which were presented by the Protective Committee paid at par?

A. Yes, sir.

Q. And the various amounts that you show here as a result of mandamus suits, they have been paid at par up to this time, have they not?

A. Yes, sir.

Q. Now, the various judgments that are listed on this exhibit, Ragan, Hayes, Avenius, and so forth, have been settled in accordance with the testimony you previously gave us?

A. Yes, sir.

Q. Miscellaneous principal to others, bond principal of $3,000.00; what's that, Mr. Shaw, if you know?

A. That was $3,000.00 of bonds and related interest coupons presented for payment by others than the Bondholders' protective Committee, and unfortunately I cannot give you the name of the claimant at this time without going into the records of the Coral Gables First National Bank. The demand was made upon us through the Coral Gables First National Bank, and our check was simply issued to that bank.

Q. Here are two items of cancellation of bonds owned by "Sinking Fund". What is that?

A. Those are bonds that were taken in in the settlement of the assessment liens; they appear on here largely to reconcile these amounts with the amounts shown in our June 30th audit reports for each of these years. In these years in which they appear, the bonds were canceled through the appropriations which had been set up for them, but without any cash entering into the transaction at that time. It was simply a cancellation entry wiping out the bonds which had been used in those settlements.

Q. Do you recall, or have you a record of the aggregate principal amount of bonds held by the Bondholders' Protective Committee?

A. I do not have a record which is accurate, Mr. Berry. We did make an investigation of that at one time, and found that they held approximately 83 or 84% of the bonds. However, at the time of the settlement they held only about 48 or 49% of the bonds as to principal.

Q. Was that decline occurring during the period that you were paying interest to the Committee, or did it occur all at one time—the loss of bonds?

A. Not having the records of the Bondholders' Protective Committee available, I am unable to accurately state the exact time of any of the withdrawals of bonds from the Committee.

Q. In spite of withdrawals from the Protective Committee, and the lessened amount of bonds held by that committee, you nevertheless continued to pay voluntary interest exclusively to the committee for the benefit of such bonds as they held?

A. At some date which I do not recall, and which I will have to look up, a percentage of approximately 49-plus was used for the further payment of interest to the Bondholders' Protective Committee; the details of that I will have to look up. I do not have it before me.

Mr. Clarke:

Percentage of what, Mr. Shaw?

A. As to their relation to the funds on hand. I believe that that applied to the 1936 levy. I'll look that up and give you that detail.

Mr. Warren:

Is that the 1936 or 1937 levy?

A. The 1936 levy, for the year 1936.

By Mr. Berry:

Q. Mr. Shaw, I notice that the amounts of interest paid to the Bondholders' Protective Committee vary considerably in round figures, $57,000, $141,000, $42,000, $81,000, $15,000, $107,000 and $58,000. Was that fluctuation due to failure to collect or to a reduction in the amount of the tax levy?

A. It was due largely to failure to collect. I might say further that it depended, also, upon the collection and sale of delinquent taxes as much or more than upon the collectibility of current taxes. Any year in which delinquent taxes were active, there naturally would be larger amounts available for debt service.

Q. Mr. Shaw, the question I just asked you about that is reflected in your Exhibit 14 that you have heretofore put in, is it not? (Exhibiting document to witness.)

A. Yes, sir.

Q. Mr. Shaw, when you completed your plan and declared it in operation, did the City issue to itself or to anyone else any sort of security for the $504,938.25 of interest paid to the Protective Committee?

A. No, sir.

Q. There was no refunding bonds and no TPCs issued?

A. No, sir.

Q. Were those coupons all canceled?

A. Yes, sir; canceled upon receipt.

Mr. Clarke:

Mr. Shaw, were these mandamus and judgment items here payments or purchases, on Defendant's Exhibit 9?

A. The mandamus items were payments. Under the head of judgments, the Ragan and Avenius, Pesik, Farson & Sons items were purchases, and the Gordon B. Hayes items was a payment.

Mr. Adams:

To finish that subject there, were any refunding securities issued on account of the three listed mandamus suits and the Gordon B. Hayes judgment, on Defendant's Exhibit 9?

A. None. May I say that as to Defendant's Exhibit 9, refunding securities were issued only in connection with the Frances L. Ragan, Avenius, Pesik, Farson & Sons, the Sarah McGuire judgment, and Ellen Hepkins' judgment, except in so far, of course, as refunding securities were issued to the creditors shown on this exhibit for balances remaining on January 1, 1937.

Mr. Warren:

Mr. Shaw, in this Exhibit 9 there is a total of $85,928.20 paid out on notes, accounts and judgments other than bonds and bond interest. Representing that amount, did the City issue to itself any refunding bonds or TPCs or other securities?

A. No, sir.

Mr. Clarke:

Isn't there an exception to that? I thought you stated an exception a moment ago.

A. There shouldn't be any exception to that. Strike out of my previous list the Sarah McGuire and Ellen Hepkins matters. No refunding securities were issued for those on account of the amounts shown hereon in connection with those items.

By Mr. Berry:

Q. Mr. Shaw, on Exhibit 8, again, the next to the last item there is a liquidating dividend of $1,257.25 on the TPCs. Can you tell me what that liquidating dividend was?

A. That is the dividend or dividends paid to the City for the tax participation certificates it owned out of the funds available on July 1, 1938, 1939 and 1940, in the same percentage as dividends paid to the holders of other tax participation certificates.

Mr. Berry:

Mr. Shaw, you have furnished a copy of Resolution No. 1762, the memorandum of agreement between Coral Gables and Everling and others, with a schedule attached thereto, and the escrow agreement to which we have referred in connection with the McGuire transaction. I will now ask that those be offered for Identification as Defendant's Exhibit No. 20.

The Master:

The original of that was not marked?

Mr. Berry:

No, sir; it was agreed a copy could be filed in lieu of the original.

(Said instruments collectively marked as Defendant's Exhibit No. 20 for Identification only.)

Q. Mr. Shaw, in response to my question earlier for a copy of the escrow agreement with Robert H. Cook, Inc., you have presented two identical letters, one dated May 9, 1938, and one dated June 15, 1938, except as to amount, one referring to $48,705.29, and the other to $52,696.33. These letters direct the Coconut Grove Exchange Bank to pay out the above funds to Robert H. Cook, Inc., upon

presentation of a draft with refundings bonds attached, provided the same are purchased at a price not to exceed 47½ cents on the Dollar, which drafts are subject to verification by G. N. Shaw, as treasurer; that is correct, is it not?

A. That is correct, sir. And there was an understanding with Robert H. Cook, Inc., that the price of any purchase for our account, under these letter-escrow agreements, would be subject to acceptance before the confirmation of the purchase.

Q. Were any bonds purchased by Cook in excess of the price of 47.5 cents?

A. Yes, Mr. Berry, bonds were purchased for prices ranging up to 66.5 flat. The ceiling put upon the price of bonds in these letter agreements was for the protection of the City, and was excepted to any specific cases by the City later on, due to the advancing market and the inability to secure bonds at a price within the original ceiling.

Q. I confess I don't understand the latter part of that answer, Mr. Shaw.

A. Maybe I can correct that. Read that answer to me, please. (Answer read to the witness.) Now read the first part again. (Answer read through the words "for the protection of the City" after which the witness added the following): And was based upon the then expectation of the market prices at the time the agreements were entered into.

Q. You simply mean that you were buying bonds in advance of need or necessity because you thought they were going to advance?

A. That is correct, sir.

Q. Now, Mr. Shaw, what did you pay Mr. Cook for his services in buying these bonds?

A. Three-quarters of one per cent.

Q. Did the Bank of Coconut Grove receive any fee in this matter?

A. A small fee, I believe, Mr. Berry. I will look that up if you wish, but a very nominal fee, if any.

Q. Never mind about pursuing that further. Was any advertising done by Cook for presentation of bonds, or how did they go about selecting the bonds for purchase?

A. I do not know how Cook selected them, but I assume that he picked up such favorable offerings as were made on the market.

Q. Is Cook a regular bond broker here?

A. Yes, sir, a bond broker.

Q. In Miami?

A. Yes, sir.

Q. Is there an ordinance or resolution of the City Commission authorizing that agreement with Cook?

A. No, sir.

Q. Is there an ordinance or resolution or other writing by the Commission fixing the price at which they would buy bonds in this way?

A. No, sir.

Q. When those bonds were bought, were they canceled?

A. No.

Q. Are they being kept alive now?

A. Some of them. They were thrown into the general reserve to meet the cancellations required by Section 12 of Ordinance 269. Some of these specific bonds may have been subsequently canceled. I cannot say definitely.

Q. But none of them were cancelled at the time of purchase and delivery to you?

A. No, sir.

Q. And they were purchased from general funds of Coral Gables?

A. They were purchased from general funds and from the proceeds of the sale of 1936 and prior tax sales certificates to the Coral Gables Development Company.

Q. A while ago, Mr. Shaw, you mentioned that when I was asking you about this at a previous hearing about

the disposition of the proceeds of sale of the securities to the Coral Gables Development Company that you now had a further explanation of where some of the funds came from. Would you like now to correct your previous answer and put that into the record?

A. Yes, sir.

(Thereupon, there was discussion had, which was off the record, during which the witness stated he would require some time to go into the subject matter before responding to the question, upon the announcement of which a general off the record discussion was had relative to the desired information, after which the examination of the witness was resumed.)

Cross Examination.

By Mr. Clarke:

Q. Mr. Shaw, at the previous hearing there was a request made that you prepare a schedule showing all transactions of the City of Coral Gables on its debt service and bond accounts, other than those that were handled strictly in accordance with the refunding program. That is, the exchange of old bonds for bonds and TPCs in strict accordance with the refunding program. Do I understand that Defendant's Exhibits 8 and 9 are all of those items, or are there others? Taking them up specifically, Defendant's Exhibit 9 covers apparent cash payments and purchases up through the year 1936 and 1937, and I was wondering where cash payments and purchases were extended beyond the year 1937.

A. All other cash payments, to the best of my knowledge and belief, are contained in this Exhibit 8; all subsequent cash payments.

Q. Now, do I understand, then, that Exhibit 8 picks up where Exhibit 9 leaves off?

A. Yes, sir.

Q. So far as date is concerned?

A. Yes, sir.

Q. And does Exhibit 8 reflect all transactions other than those handled by the two New York banks and direct exchanges under the refunding program with the City?

A. It does, Mr. Clarke, except that Exhibit 8 does not set forth the full detail of such transactions such as the McGuire and Hepkins settlements about which I have previously testified.

Q. I mean by that, it does refer to all of those?

A. Yes, sir.

Q. I notice, by way of illustration, that it does not refer to any of the cash payments and transactions under the agreements with certain creditors, included in which is one of my client, C. J. Root.

A. No. We perhaps erroneously didn't consider that in the same category. If you wish, I can present a schedule showing the payments made from the mandatory levies upon the several judgments still in existence and being serviced as such.

Q. Well, now, by mandatory levies you include all of those in which you have been making special levies during the last three fiscal years?

A. Yes, sir; I refer specifically to the six judgments, which include Fiduciary Council, Inc., C. J. Root, Augustus T. Ashton, Lois Harmon, C. G. Vallette and W. J. Noel.

Q. Now, are there any other bond transactions, since January 1, 1937, other than those shown on Defendant's Exhibit 8, and those six spread levies?

A. No.

Q. Are there any other payments on account of capital transactions made during that period that aren't shown on these schedules, whether you consider them in or out of the refunding program?

A. No.

Q. Then these two exhibits, 8 and 9, plus the mandamus levies, properly reflect all payments made to creditors of the City other than payments for current operating expenses; is that correct? For the period from January 1, 1937?

A. And the current payment of interest upon the refunding securities.

Mr. Clarke:

That's all tonight. I have some more questions about these exhibits, however, but I will take them up tomorrow.

By Mr. Lea:

Q. Mr. Shaw, will you give us a break-down of those judgments and the bonds and coupons?

A. Of the judgments still in force?

Q. Of these special mandatory levies.

A. There is a break-down of those in the Petition, is there not, Mr. Adams?

Mr. Adams:

Yes.

Mr. Lea:

I don't believe so; not of the bonds and coupons involved in it.

A. Yes, sir, I think it is in the petition.

Mr. Lea:

I don't think it is in the petition; it may be.

Mr. Adams:

It is all contained in Exhibit "C" to the Petition, where you will find the judgments described by the name of the creditor and the number of the suit. I am looking at Page

25, where the Ashton judgment is described, with a list of bonds and other stuff in them.

(Thereupon, there was further discussion had relative to the above matter, which was off the record.)

(Thereupon, at 5:00 o'clock P. M., the hearing was recessed to 10:00 o'clock A. M. the following morning, March 26, 1941, at which time, upon re-convening, and the same counsel being present as noted heretofore in the record on Page 787, the following proceedings were had:)

Mr. Berry:
If the Court please, we have had marked for identification Defendant's Exhibits 1 to 20, and I now move the admission of those exhibits and the filing of them as defendant's exhibits.

The Master:
Any objection?

Mr. Adams:
No objection.

The Master:
It is so ordered.

(Thereupon, the said instruments heretofore marked for identification were admitted in evidence as Defendant's Exhibits 1 to 20, both inclusive.)

904 G. N. SHAW was thereupon recalled as a witness on behalf of the Petitioner, and being still under oath, further testified as follows:

Cross Examination (Resumed).

By Mr. Berry:

Q. At the conclusion on yesterday, Mr. Shaw, you announced you would have this morning an explanation of the additional funds that were used in connection with the audit of December 21, 1938. I now ask that you make such explanation as you see fit of your previous testimony.

A. The point of misunderstanding, or lack of clarity seems to be that the purchases as reflected by Defendant's Exhibit 8, purchases of refunding bonds, are in excess of the money shown to have been available for that purpose by the audit of the proceeds of the sale to the Coral Gables Development Company, and the use of those proceeds. The audit shows all but $313.08 of the money as having been applied to the purchase of certain obligations and the payment of the refunding expenses. The audit shows all of the refunding expenses amounting to $139,135.47, which is a proper application of those expenses, the proceeds of the sale to the Coral Gables Development Company having been intended for the payment of those expenses and for the purchase of obligations. However, prior to the receipt of the money from the Coral Gables Development Company the City had necessarily paid certain of the refunding expenses out of other funds, and the later receipt of the Coral Gables Development Company proceeds acted as a reimbursement of those other funds to the extent that the refunding expenses had been previously paid. This amounted to approximately $48,705.29, which accounts for the money placed in the first escrow of May 9, 1938, for the purchase

of refunding bonds through Robert H. Cook, Inc. The second escrow of June 15, 1938, in the amount of $52,-696.33, is the exact amount of the receipts from the Development Company on account of 1936 taxes.

Q. Are you through with that?

A. I think I have covered it.

Q. Mr. Shaw, I think you testified that at the time the $396,900.00 was paid, approximately $8,000.00 was paid on the 1936 taxes?

A. That is correct.

Q. And then the $52,696.33 which you have just mentioned is the balance of the $60,791.01 which was unpaid, but which is reflected as a single amount in the audit?

A. That is correct.

Q. Now, from what funds were the sum of $48,705.29 and the $52,696.33 which had been expended prior to that time and were reimbursed, as you have stated, from what funds were they drawn?

A. The $52,696.33 had not been expended prior to that time, but was expended directly from this source, that is, the Coral Gables Development Company proceeds. The $48,705.29 represented advance payments of the refunding expenses, and had been paid from various funds of the City arising out of current and delinquent tax collections and other collections. It would be difficult to say the exact source from which all of these expenses had been paid.

Q. Well, that $48,000.00 expenses was from general funds of Coral Gables, irrespective of the source?

A. That is correct; from general receipts, let us say.

Q. Well going back to the audit of December 21, 1938, that shows a complete analysis of the expenditure of the entire amount of $60,791.01. Now, either that was spent in that way, and the $52,000 came from another source, or else you had another $52,000.

A. No, sir. That same audit shows $53,701.12 as having been used for the purchase of $118,000 of refunding

bonds. This second escrow which we have mentioned in the amount of $52,696.33 represents the item that I have just described. It does not tally exactly, since the cost of the bonds purchased did not exactly equal the amount deposited, and a small amount was furnished from general funds to make up the difference. That amount from general funds was $99.18.

The Master:
Mr. Berry, is that Exhibit 8?

Mr. Berry:
Yes, sir.

Q. Mr. Shaw, your Exhibit 8 shows the expenditure by Cook of $4,995.00 in July of 1938, and the expenditure of $6,832.00 and $33,298.13 in August, 1938, and the audit which you have submitted is as of the fiscal year ending June 30, 1938. Why were those expenditures thrown back into preceding months?

A. The audit to which you refer is dated on its letter of transmittal, December 21, 1938, and is not intended to represent any particular closing date, but the entire coverage of the transactions mentioned therein.

Q. Mr. Shaw, I failed to ask you on yesterday if the judgment of Avenius, Pesik and Farson was satisfied or assigned to the City.

A. I am confident that that matter was assigned, although I do not have the instrument before me.

Q. And assuming that that is correct, that assignment was handled in the same way as the other assignments testified to on yesterday, and new refunding bonds were issued to the City and are now held by the City's general fund unless they have been canceled, as you have stated, on the regular cancellation dates?

A. That is correct.

Q. If you can locate the instrument, we would like to inspect it. Now, on yesterday you testified to certain payments made in 1930 and 1931 of $9,420.00 and $44,610.00, shown on Exhibit 9, and stated that these special levies were later held invalid. Were they ever attempted to be relevied?

A. They were not special levies. They were what is known in Florida as special assessments, and not recurring items. No effort was made to relevy those items, since the opinion of the Court seemed to preclude the possibility.

Q. Was any adjustment made with the taxpayers who had previously settled, after the special assessment was declared invalid?

A. No, sir.

Q. That was retained by the City?

A. It had been paid out to the creditors to whom the money applied, and could not be recovered by the City.

Mr. Berry:

That's all right now.

Cross Examination.

By Mr. Clarke:

Q. Mr. Shaw, the various purchases of bonds shown by Defendant's Exhibit 8, were they made before or after the 90% clause in the general refunding program—the 90% clause in your agreement with the Barker Committee was complied with?

A. If you mean by that the commencement of the exchanges of refunding securities, some of these purchases occurred before and some after that time.

Q. When was your agreement with the Barker Committee that had the 90% clause in it—when did it go into operation?

A. I don't know just what you mean by the agreement with the Barker Committee containing the 90% clause.

Q. As I recall, the general refunding brochures that the Barker Committee put out contained a stipulation to the effect that at least 90% of commitments had to be had for refunding—at least 90% of the bonded indebtedness of the City, before it would be binding on those who had consented in the meantime, and at some juncture there was bound to have been a determination that that 90% point had been reached, and I was trying to find out when that point was.

A. I believe that the only record determination of that would be the commencement of the exchanges. I know of no other establishment of that date in the records.

Q. Well, it was on or before the commencement of exchange; is that correct?

A. It would properly have been so, yes; the first of September, 1937, or perhaps a few days prior thereto; not more than a week.

Q. Now, will you point out, please, which of these purchases of bonds were prior to the first of September, 1937?

A. The item of the Ragan judgment shows September 17, 1936, which would have been before. The Avenius, Pesik, Farson Sons & Company item shows March 27, 1937, which would have been before. The purchases shown as "balance in revolving bond fund account" were made prior to 1935, which would have been before.

Q. Those were all purchases by the City trust fund?

A. Yes, sir.

Q. There were, then, no purchases from sources as shown on your key, "A", "B", "C", "D" and "F", prior to September, 1937?

A. No. That is obvious, Mr. Clarke, since the funds which enabled those purchases were not received until on or after October 11, 1937, the date of the Coral Gables Development Company transaction.

Q. Mr. Shaw, what was the market price of the TPCs during the period beginning October, 1937, and thereafter, during the purchase by the City of these judgments and old bonds out of your sources A, B, C, D and F?

A. I could not answer that question from data that I have now, Mr. Clarke. I know that I no doubt checked up on the market during that time, but I do not remember the exact trends. Tax participation certificates have varied in price since their issuance.

Q. Do you recall the various range of that price?

A. From approximately 5 to approximately 10.

Q. Will you check with your correspondence with the Barker Committee and let us know at a later date whether you have a letter from the committee on or about September, 1937, with regard to the compliance to the 90% feature in the refunding program?

A. September, 1937?

Q. Or at any other time. And also, whether the City wrote a letter to the committee with regard to the same subject.

A. Yes, sir.

Q. Mr. Shaw, I understood you to state yesterday that the purpose of these bond purchases as shown on Defendant's Exhibit 8 was compliance with section 12 of Ordinance 269. Is that correct?

A. Yes, sir, in anticipation—

Q. Was there any other purpose?

A. There was a dual purpose, Mr. Clarke. The City was anticipating its requirements for compliance with that section, and was attempting to prevent harmful tax rates and a disruption of the refunding program.

Q. In connection with the second purpose, did the City adopt a plan of dealing with various of its pressing creditors on such basis as best they could?

A. The City adopted no particular plan, but considered each emergency as it was faced.

Q. During the period of those purchases the City had no definite plan as to dealing with and retiring, so far as the creditor was concerned, those obligations later purchased? Is that correct?

A. It had no comprehensive or definite plan, no, sir.

Q. Mr. Shaw, in making purchases under Section 12 of the ordinance 269, did you consider it your duty to purchase with that delinquent tax money in such a way as to retire as many bonds as that money would buy?

A. We considered it our duty to retire a Half Million of the bonds, and further retirements would have been voluntary. It was the plan of the City to retire as many as it could.

Q. Was it the City's plan to retire all those purchased with that tax money—that delinquent tax proceeds?

A. The City allocated to those retirements all of the bonds purchased with those tax proceeds, even though some of those bonds were purchased under conditions which would not have required it to so allocate them.

Q. Mr. Shaw, is it not a fact that with the 431-some-odd Thousand Dollars in cash shown as expended under Defendant's Exhibit 8, that approximately twice as many refunding bonds could have been purchased if the refunding bonds were purchased direct rather than through the circuitous route you followed?

A. I do not know that that is a fact, no, sir.

Q. Is it not a fact that the average purchase of the refunding bond was from 40 to 55 during the period shown by this defendant's Exhibit 8?

A. The average purchases of refunding bonds by us ranged from 42.92 to 64.22.

Q. Most of those were purchased between the 42.92 and the 50. range; is that correct?

A. I believe so.

Q. Your average purchases of judgments and old bonds were what, Mr. Shaw?

A. How do you mean average, Mr. Clarke?

Q. The average price that you paid.

A. I would have to figure that, Mr. Clarke.

Q. It ran within the approximate range of 45 to 55, did it not, sir?

A. Approximately 44, Mr. Clarke.

Q. Approximately 44?

A. Yes, sir; that's an average.

Q. And that is based on the claim from the standpoint of principal of the old bond plus interest on the old bond plus any accrued interest after maturity on the old bond; is that correct?

A. That is correct.

Q. And for the average price of one bond, of one old $1,000. bond for 400-and some odd dollars, you received, did you not, one refunding bond when you converted it at $500.00—a $500.00 refunding bond?

A. That is correct.

Q. Now, when you purchased $1,000. face value of the new refunding bonds at somewhere near the same price, in the 40s, you received two $500. refunding bonds, did you not?

A. That is correct.

Q. And generally speaking, and treating the tax participation certificates as worth from five to ten cents on the Dollar, you got just about twice as many—twice that much in face of refunding bonds by direct purchases as by the circuitous route that you followed on those purchases of old accounts; isn't that correct?

A. That is correct, Mr. Clarke, and that indicates the harm that has been done both to the refunding program and the City by these hold-out items.

Q. Does that not also indicate that the first purpose you stated was an incidental purpose, and that the main purpose was the second, that is, dealing with the hold-out bondholders?

A. No, sir, I would not. I would say that they were joint purposes.

Q. But treating the second purpose—or, the first purpose as the sole purpose, you had a two-to-one advantage of buying the refunding bonds as the Section 12 provides, that is, purchasing refunding bonds on the market; isn't that correct?

A. That is correct; but had some of these militant creditors not been dealt with at that time, there might have been no refunding program.

Q. I want you to understand, Mr. Shaw, that I am not criticizing the City for what it did, but was just trying to get at the reason for it doing it. Mr. Shaw, with regard to Exhibit 9 of the Defendants, is it not a fact that during the fiscal years beginning with the first one shown on the exhibit and ending with the last one, that at the time of making up the tax levy each year there was an understanding and agreement between the City and the Barker Committee as to the approximate amount of the tax levy that was made that was to be paid over to that committee?

A. No, sir, that is not a fact.

Q. What was the arrangement with the Barker Committee made before collection of taxes during each fiscal year?

A. The only understanding that the City had in the fiscal years of its default was that it would first operate, and that it would pay whatever remained available to apply upon debt service.

Q. And the understanding was that whatever you had left over would be applied on the Barker Committee debt; was that correct?

A. Not entirely. We paid interest to other debts during that time, as shown by the lower block of items, of notes, accounts and judgments, on that same Exhibit 9.

Q. Then your arrangement was that you would pay on some of the unbonded debts, but that the amount that you had remaining for bonded debt would go to the Barker Committee? Is that correct?

A. Not necessarily so. The City's attitude, as I think I stated yesterday, was that it would, so far as it was able, pay and apportion its available debt service money to creditors who did not show indication of the purpose of using that money for litigation against the City which might be harmful to the City's attempts to adjust its debts, but it would have—

Q. Was it also—

Mr. Adams:
Let the Witness conclude.

Mr. Clarke:
Excuse me.

A. (Continuing) It would have paid interest to other bond creditors had any of them asserted themselves as being friendly and as not having the designs I have mentioned.

Q. Was it not a long-range plan for working out the refunding program, Mr. Shaw, with the Committee?

A. There was always a long-range plan for working out the refunding program, but I do not construe the payment of interest to them as being a part of that plan.

Q. Now, Mr. Shaw, you stated that one of the reasons that you paid them and the only reason that I have heard, was—so far, was that they were going to be friendly to you in not causing you any trouble in bond litigation, and work out a permanent arrangement. I want to know now

whether the opposite, or the converse of that was true, that the reason that you did make payments to them rather than to others was that you wanted to work out the long-range plan and cooperate with those who were cooperating with you?

A. I think I can say that was true.

Q. Now, you left me with the impression yesterday that the Barker Committee during these various years was the only demanding creditors. Did you mean to leave that impression, sir? Let's take up the first fiscal year of 1930-31, and the second, 1931-32, and the third, 1932-33, and treat those as a period.

A. I was not aware that I had left that impression entirely, Mr. Clarke. There were other demanding creditors. However, the Barker Committee left a continuing demand in a large amount. Other demands were made, I believe as early as 1931, but because of their antagonistic and obviously unfriendly nature, they were resisted.

Q. Did the Barker Committee obtain mandamus writs to require payment of any of these amounts paid to them?

A. They did not. They filed one suit for judgment, but there was never a mandamus writ.

Q. Did they obtain a judgment?

A. No. That suit was later dismissed. Was it not, Mr. Adams?

Mr. Adams:

Yes.

Q. Now, how was the payment to the Barker Committee handled?

A. The arrangements were, during a part of the time, past due interest coupons were in the hands of a Miami bank. During other portions of the time payments were made to the Bank of New York and Trust Company, which was the depositary of the Committee.

Q. Do I understand that the City of Coral Gables would remit to those two banks?

A. Yes, sir.

Q. The Miami bank, and the New York bank?

A. Yes, sir.

Q. Were either of those banks the place of presentment named in the old bonds?

A. They were not.

Q. And the Barker Committee coupons were not presented to the bank through the place of presentment shown in the old bonds and coupons?

A. They were not.

Q. Do you know whether there were any other creditors who presented their coupons through the place of presentment shown in your old bonds and coupons?

A. I think not, except as to the year 1930-31. Naturally, in our first default, numerous coupons were so presented. When our default became known, I believe that such routine presentations were stopped.

Q. Well, taking the year 1930-31, notwithstanding there was a presentment by other creditors at the place of presentation shown in the original debt, there was no interest paid to anyone but the Barker Committee that year?

A. Yes, sir. Items of $9,420.00 and $44,610.00 were paid through either the Chemical National Bank or the Chase National Bank, through regular channels.

Q. Those were treated separately from all other debts of the City, were they not?

A. They were special assessment bonds.

Q. And these payments of $57,840.00 of interest to the Barker Committee were payments on bonds other than those special asesssments; is that not right?

A. That is correct. That last payment you mention was not made until long after the presentations that I have mentioned. At the time the presentations were

made in July of 1930, the City had no funds. It did develop funds from general sources later that year, and upon the formation of the Bondholders' Protective Committee, made those payments—or, made this payment amounting to $57,840.00 in the last few days of the fiscal year 1930-31.

Q. What part did the City play in the formation of the Barker Committee, if any?

A. None whatever.

Q. Did the City, in response to inquiry from other creditors, send out letters or other notices to the effect that the matter of bond interest and that the matter of working out a bond program, was in the hands of the Barker Committee?

A. It did not.

Q. Mr. Shaw, the payments of interest shown on this schedule marked Exhibit 9, resulted, did it not, in the Barker Committee holdings having less interest coupons to exchange than did the average creditor outside of the Barker Committee at the time of the present refunding in January, 1937?

A. It did have that result. I believe I have previously so testified.

Q. There were no payments of principal to the Barker Committee within the $500,000.00 mentioned?

A. None.

Q. Do you know what the average of coupons presented by the Barker Committee at the time of exchange under the present plan was? How many coupons per bond, on the average, did the Committee turn in? I recall you explained the other day on some bonds you turned in more, and on some less.

A. That is correct. The interest submitted for exchange by the so-called Barker Committee represented 32.05%, approximately, of the principal exchanged by that committee.

Q. Now, to creditors who had not been paid any interest, what was the percentage of their interest on the same basis?

A. The precentage on interest to principal in the case of all of the exchanges other than by the Committee was 34.3%; and the percentage of interest to principal of the entire refundable value outstanding on January 1, 1937, was 33.25%. These precentages are approximate as to decimals.

Q. What was the amount of bonds exchanged by the committee?

A. Of old bonds, $4,027,000.00.

Q. And what was the amount of interest refunded?

A. $1,290,387.95.

Q. On the basis of the committee turning in 34.5% of interest, how many coupons would they have turned in in dollars?

A. Approximately $1,380,000.00.

Q. On the basis of that calculation the committee—the difference in interest turned in by the committee, and turned in by those other bondholders, figured on a percentage basis on the committee's bonds, would have been only, in round figures, $90,000.00. I subtracted the $1,290,000. from the $1,380,000. And whereas, your Exhibit 9 shows that the Committee was paid over $500,000. in interest. Will you explain that?

A. Yes, sir, I can explain that, Mr. Clarke. The Committee over a great many of those years in which it was receiving payments had almost 90% of the bonds. Some of those bonds were later withdrawn, but they had been affected by and had received a portion of the payments while they were in the committee, and the coupons representing their payments had been detached. Therefore, when they exchanged as not being depositors of the committee, their values in a great many—I might say most cases, were the equivalent of the values of the individual depositors of the Bondholders' Committee.

Q. Now will you give me the percentage of bond interest refundable on a bond that had never been in the committee, and on which there had never been any suit or mandamus against the City? That is, a $1,000 bond with interest from the date of default to January 1, 1937; what is that percentage?

A. That depends on the issue and the interest rate. In the case of the 6% bonds of January 1, 1927, the amount would have been $420.00; in the case of the 6% bonds of July 1, 1926, the amount would have been $360.00; the 5½%—

Q. Is that the special assessment?

A. That's the special assessment.

Q. Will you say that it is?

A. The July 1, 1926, issue to which I refer is the special assessment lien issue. And in the case of the 5½% issues, the amount would have been approximately $385.00. The amounts all refer to interest upon one $1,000 bond.

Q. Were not most of the bonds within that first category, the $420.00 category?

A. Slightly more than half of the bonds were in that category.

Q. Was any provision made, or has there been any provision made to equalize, in connection with this refunding program, the cash payments that had been previously made to the Barker Committee totaling over $500,000.?

A. To equalize them in what way, Mr. Clarke?

Q. To equalize them in money.

A. If you mean to equalize them as to creditors who were never depositors in the Barker Committee, no.

Q. As I understand your testimony, the average Barker Committee creditor, at the time of refunding, had a Thousand Dollar bond and interest coupons of $320.00, in round figures, to refund. Is that correct?

A. That is correct.

Q. Whereas a creditor who had never been in the Barker Committee had a $1,000 bond plus $360.00 in the case of special assessments, $385.00 in the case of 5½% bonds; and $420.00 in the case of 6% bonds, in interest coupons; is that right?

A. That is correct.

Q. And the difference between what the average Barker Committee creditor had and what the man who had never been in the Barker Committee, was represented by cash that had been paid to the Barker Committee; is that correct?

A. Represented, yes, by the payment of coupons of the Barker Committee depositors.

Q. And that cash, of course, went to the bondholders?

A. Yes.

Q. It went to the committee for the bondholders?

A. Yes.

Q. Now, under this refunding program, what did this man who had never been in the Committee get in lieu of the cash that the Barker Committee man had received?

A. For the additional interest that he may have turned in as of January 1, 1937, he received tax participation certificates.

Q. Then under this plan he received tax participation certificates for the difference between $320.00 and $360.00 and $385.00 and $420.00, as the case might be, instead of cash that had been received by the persons who had been within the Barker Committee; is that correct? The one receiving TPCs and the other having received cash?

A. That is correct.

Q. Would it not have been necessary, in order to completely equalize those two types of creditors, to have provided for a cash payment to him to equalize those differences?

A. I do not believe so, sir.

Q. How else would they have been placed on the same footing?

A. I do not see why it would have been necessary to place them on the same footing. The law, as I understand it, does not—leaves that matter up to the man's own diligence in securing payments when they are possible.

Q. Mr. Shaw, I wasn't referring to whether or not the law required the City to do it, but I was inquiring as to whether or not that would have been necessary in order to put them on exactly the same money footing.

A. As a matter of theory, such a payment would have put them upon the same footing.

Q. And the delivery to him of TPCs that are worth from five to ten would not put him on the same footing as a payment to him of cash, obviously, would it?

A. No. The TPCs could not be the equivalent of a cash payment.

Mr. Clarke:
That's all.

Mr. Berry:
I have some more questions.

Cross Examination (Resumed).

By Mr. Berry:

Q. Mr. Shaw, did not Ed. C. Wright & Company, represented by Mr. Wright and perhaps Mr. Roberts, and the American National Bank, represented by either Mr. Wylie or Mr. Warren, make a number of trips for conference with the City Commission here with the view of settling this indebtedness?

A. I did not understand that the American National Bank was involved. Until the filing of the suit by that institution, I thought that Mr. Wright was representing himself, and that the attorneys and others you mentioned were in that position.

Q. Well, assuming—

A. (Cont'g) They did come to Coral Gables several times and several times conferred with me and with Mayor McGarry and with the City Commission, and with Mr. Adams.

Q. And didn't they agree to refrain from litigation during those times, pending a settlement?

A. Such an agreement was discussed but was never consummated.

Q. On or about the third day of August, 1939, wasn't there a tentative agreement entered into which was not consummated?

A. A tentative agreement was entered into, but was not consummated because of the fact that the City Commission as a whole did not approve that agreement.

Q. That agreement provided, in substance, for the sale of coupons at two-thirds of their value, did it not?

A. That is correct.

Q. And for a levy of three-tenths of one mill for future payments in a like way?

A. That is correct.

Q. And that the bonds would not be placed in suit, but would be held during that period of time?

A. That is correct; that was the tentative agreement.

Q. And the City rejected that of its own motion?

A. That is correct. There were other provisions in there which would not have been possible for the City to follow.

Q. Now again, on the 20st of December, 1939, wasn't there a long conference at which Messrs. Roberts and Wright and Wylie were present?

A. There was a conference. I had forgotten that Mr. Wylie was here. I remember distinctly that Mr. Roberts and Mr. Wright were here.

Q. Wasn't that conference written up in the Coral Gables Riviera of December 22, 1939, in detail?

A. I do not recall, at this time.

Q. And as a result of the meeting, did not the City refuse to make any settlement with Mr. Wright or the American National Bank?

A. I do not believe that it was absolutely conclusive. As a matter of fact, I think we left the conference with the idea that there would be still further conferences. The next morning the American National Bank suit was commenced.

Q. Then the account in the paper that the Commission stated "that the freeholders of Coral Gables have authorized the issuance of $4,200,000 of bonds and no more, and that they could do nothing else, and adhere to the plan", is not correct?

A. That is a newspaper account, Mr. Berry.

Q. Well, is it or not correct?

A. I do not know that that was the conclusion of the Commission at that meeting. Certainly after the full intent of the Ed. C. Wright interests was known that was the conclusion.

Q. And it was after all their proposals were rejected that the suit was filed, was it not?

A. All proposals to that time, yes, sir. The proposals to that time had not been within the ideas of reasonableness and ability by the City Commission.

Q. Well, is it or not true that Mr. Wright either on his own behalf or in company with an attorney of the American Bank, had made proposals that were at least as favorable as some accepted by the City prior to that time?

A. I think not. I would have to check back to see, but I do not.

Q. Mr. Shaw, do you remember about what date the City and Mr. Wright began their negotiations?

A. No, sir, I do not recall the exact time.

Q. Would you say it was as early as 1935?

A. I would not say it was that early.

Q. Would you say it was in 1936?

A. I do not recall any negotiations until in 1937.

Q. And they continued from 1937 until the filing of the mandamus in December, 1939?

A. Intermittently, yes, sir.

Q. Now, you said the proposed agreement of the third day of August, 1939, was finally rejected for other reasons; what were the other reasons that you referred to?

A. The reasons were that the City Commission concluded that the physical working out of that agreement was beyond the capacity of the City; the agreement was dependent upon the bringing in of all the unexchanged debts, and it was pretty thoroughly decided that that was an impossibility; the agreement further provided, I believe, that we would stay all litigation until one year from the date of that tentative agreement, and had we done so we would have gone beyond the then termination of the Wilcox Bill and the Municipal Bankruptcy Act, and any possibility of remedy from our situation.

Q. Now, Mr. Shaw, in August, 1939, hadn't all of these mandatory levies of these other creditors been decided against the City, and weren't they in effect at that time?

A. Yes, sir, they were in effect as of August, 1939.

Q. And you were not contesting any of those?

A. We had no means of contesting those except through a Petition such as in this case, and we had not yet made up our mind to take that step.

Q. And some 94% of the original bondholders had already accepted your plan and exchanged?

A. That is correct.

Q. So outside of the mandatory levies and the bonds which you could not locate, the claims of Wright and the American National Bank were the only outstanding claims, were they not?

A. That is correct.

Q. Then why did you say you had to bring in other claims in this settlement?

A. Others besides those of Ed. C. Wright; you have just mentioned the unlocated bonds, over which, so far as we knew, Mr. Wright had no control, and to which, so far as we knew, he had no more access than we did.

Q. Now, isn't it a fact that this agreement never mentioned those unlocated bonds in any way?

A. The agreement itself may not have mentioned them, but they would have been a mutual follow-up of that agreement, whether they were actually brought into it or not.

Q. Well, at that time, in dollars and cents, how many unlocated bonds were there?

A. I think about $70,000.00.

Mr. Clarke:

That's bonds, or bonds and interest?

A. Bonds. That's bond principal; about $75,000.00, make that.

Q. Now, the suit by the American National Bank in December, 1939, was the first suit filed by that bank, and no suit had previously been filed by Wright & Company, had it?

A. That is correct.

Q. Now, Mr. Shaw, what tax levy was made between the years 1935 to 1939 to pay on the outstanding original bonds and interest thereon?

A. In the years 1935 and 1936, a levy of five mills in each year. In the years subsequent thereto, a levy of six mills, adjusted by the proportion applicable to the debts which were in judgment and temporarily excluded from the six mill levy and the refunding. This levy was made on and after the year 1937 for the refunded and unrefunded bonds alike.

Q. But not a penny of any of those levies was paid on the unrefunded bonds with the exception of the interest paid to the Barker Committee, was it?

A. You are speaking of the presently unrefunded bonds?

Q. Yes; or any unrefunded bonds at that time, or later.

A. I cannot say as to any unrefunded bonds definitely, but speaking as to the presently unrefunded bonds, no money has been paid them, but a reserve—a cash reserve has been set up to pay them on exactly the same basis that interest and other monies has been paid to the refunded bonds since January 1, 1937.

Q. Now, isn't it a fact, Mr. Shaw, that since 1937 you have levied exclusively for the refunding bonds, and have set up that cash for the benefit of the refunding bonds not yet issued, and have nothing in your treasury and no levy for the unrefunded bonds?

A. No, I do not think that is a fact. We have levied for the bonded indebtedness and other indebtedness of the City of Coral Gables, irrespective of whether it has been refunded or unrefunded. We have in our levy ordinances allocated to the issue of January 1, 1937, fund the amount applicable to the bonds and other debts which have been exchanged. We have reserved on an exactly equal numerical basis for the bonds which have been unexchanged.

Q. Wasn't a claim made upon the fund which you had set aside for refunded bonds for the unrefunded bonds, and wasn't that denied?

A. Two claims have been made upon those funds. One was made by the—one was made in the American National Bank suit, which sought to secure payment of interest coupons from the monies allocated to the refunding bonds, or heretofore called the exchanged bonds. In a sence, another claim was made upon the reserve funds in that in the tentative agreement which we have just

recently discussed, between the City and Ed. C. Wright, I believe Mr. Wright was to receive as a part of that agreement his proportion of the reserve money. I am speaking entirely from recollection, and may not be entirely correct.

The Master:

What agreement are you speaking about there?

A. This tentative agreement, Your Honor, that Mr. Berry has questioned me about as having been under discussion in about July or August of 1939.

Q. Now, isn't it a fact that your various ordinances, including Ordinance 371 for the fiscal year commencing July 1, 1940, provided only for refunding bonds and tax participation certificates, bond purchase fund, equipment and incinerator notes and debt service expenses, with no provision for unrefunded bonds?

A. You are speaking of the City Manager's budget estimate, Mr. Berry, and not the levy ordinance. The City Manager's budget estimate analyzes the matter from the standpoint of all refunding bonds issued or to be issued, and does not specifically refer to the outstanding unrefunded old bonds. The levy ordinance, however, treats those in a different manner.

Q. All right, sir. How much money have you got now available to pay on unrefunded bonds? I am not asking about a reserve to be paid on refunding bonds when issued; I am asking, since 1935, how much money has been held for the unrefunded bonds and not paid to them, or has been diverted into some other channel; if so, I want to know what that is.

A. I certainly couldn't answer such a question, offhand. The money that we now have on hand applicable to the unrefunded bonds is the reserves which I have mentioned, and as to which I have sent for information.

Q. Well, isn't it a fact that the reserve which you have mentioned is held not to be paid until refunding bonds are issued and then will be used to pick up interest from 1937 to date of issue?

A. That is correct. Or it might well be used to pay to the unrefunded bonds provided mechanics were set up so that the necessary interest and other credits upon those bonds could be made.

Q. Now, in the year 1935 it is alleged that the amounts collected by this Petitioner for taxes levied solely for the purpose of paying the principal and interest of such outstanding obligations, and that refers to the obligations outstanding on January 1, 1937; now I want to know what taxes were levied solely for that purpose. That's what I'm trying to reach.

A. May I see the allegation that you refer to?

Q. Yes, sir; (handing Petition to the Witness).

Mr. Haycock:

Give us that number, Mr. Shaw.

Mr. Berry:

Section 11, second paragraph, the last five lines.

A. That's on Page 5. I can give you that figure, Mr. Berry, but only after reference to the books and statements, and a compilation of them. You want to know, as I understand it, the amount levied and collected solely for the payment of principal and interest on the outstanding obligations between the years 1935 and 1939, both inclusive? Is that right?

Q. That's correct.

A. I can prepare such a figure.

Q. Now, in Defendant's Exhibit 11, which you have filed, Statement of Tax Millages, 1937 to 1940, 5.78 is levied for refunding securities. Then followed the mandatory levies, then follows the Everling-Cornman agreement, the tax discounts, and the debt service; then follow,

below that, the 12/100ths of a mill levied against the non-homestead exempt assessed value for debts refundable, second series, equipment notes, incinerator notes, and current operating expenses. Now, is that exhibit correct?

A. That exhibit is correct.

Q. Point out to me, then, where there is a levy for the unrefunded bonds for the year 1937.

A. I show at the top "Levied against all assessed value for the 1-1-37 refunding securities and debts refundable thereby, First Series". I believe that that includes the refunded and the unrefunded.

Q. Now, you stated here that when demand was made and you had money, that you had to make payment on the doctrine of "First come first serve", is the reason for making payments that we have called preferential. Why did you not use that fund to pay off Mr. Wright and Mr. Wylie when they made demand for Wright & Company and the American National Bank?

A. Because that fund had then been allocated.

Q. It had been allocated so it could not be used for the unrefunded bonds; isn't that true, Mr. Shaw?

A. As a matter of fact, Mr. Berry, are we not entering into a legal discussion?

Mr. Berry:

I don't think we are, if the Court please. As a matter of fact, if there is a levy anywhere for the unrefunded bonds, I can't find it, and he says there is, and I am asking him to point it out.

Mr. Haycock:

If the Court please, the witness hasn't stated there has been any specific levy made for these unrefunded bonds; he has clearly stated in each instance that from the time of the refunding until this time that the levies have been

made for refunded bonds and unrefunded bonds, the interest on the unrefunded bonds payable under the plan, and that this 5.78 mill levy for the funds have been collected, and they are now reserved for the interest to be paid on those bonds if, as and when refunded. Now, Mr. Berry's position is that there are funds there that should be allocable today to the payment of unrefunded bonds, when the Court has already adjudicated that question, and says as far as they are concerned, on their unrefunded bonds they have no interest whatsoever in that levy, and the Courts have sustained the position of the cities and the counties all down the line, that the monies that are levied to pay the interest on refunded securities cannot be reached by mandamus or unrefunded securities

Mr. Berry:

Did you say counties?

Mr. Haycock:

Well, let's say the cities, then.

Mr. Berry:

If the Court please, I am glad counsel made the statement. That's exactly what I am contending here, that the allocation of these funds—in the allegation in the petition, that they had levied solely for the outstanding indebtedness on January 1, 1937, is incorrect, and he now states that there is a fund which is not allocable to any of the unrefunded bonds, irrespective of this, and that that has been settled by the Court.

Mr. Haycock:

Now, Mr. Berry, in reading from the petition, reads only five lines of a paragraph; we submit to the Court that the entire paragraph should be read and construed in the light of the petition.

The Master:
Well, there seems to be nothing for me to decide at this time.

(At this time Mr. W. Terry Gibson, one of counsel of record for certain of the objecting creditors, arrived at the hearing. Following this, there was a brief off-the-record discussion, whereupon, at 12:05 P. M., a recess was taken until 2:00 P. M., at which time the hearing was resumed.)

Mr. Berry:
If the Master please, just at the concluson of the session before lunch, in response to a question I asked Mr. Shaw, Mr. Haycock made a statement regarding it; I would like to have his statement treated as evidence in this record, and not as a casual statement in the record.

The Master:
The statement is in the record?

Mr. Berry:
Yes, sir.

The Master:
Mr. Haycock, you meant it that way, didn't you, as an admission, or did you?

Mr. Haycock:
No, sir, it is not for the purpose of an admission of anything; it is just an objection to the course of examination, and was more or less an objection to the manner in which Mr. Shaw was being interrogated. It is not to be taken as an admission of any of our rights.

The Master:

The Master can't treat it as an admission or evidence unless counsel so intends it, but the statement is there.

Mr. Berry:

Well, may I put the matter this way.

939 Thereupon G. N. SHAW was recalled as a witness on behalf of the Petitioner, and being still under oath, further testified as follows:

Cross Examination (Resumed).

By Mr. Berry:

Q. Mr. Shaw, did you hear Mr. Haycock's statement in the record prior to the adjournment for lunch?

A. I did, Mr. Berry, but if I am to be asked about it, I would like to have it read back.

Mr. Berry:

Very well; read it to him. (Statement referred to was thereupon read by the Reporter.)

Q. The question I wish now to ask is,, whether or not that statement correctly represents the facts regarding it.

A. That statement is rather involved, and I don't think that I care to put a simple answer as to it, even after having heard it. I think that I previously testified as to the manner of our levies. As to the matter of any legal findings mentioned by that answer, I, of course, am not competent to answer. If you will ask me any specific questions or points as to that, Mr. Berry, I will be glad to try to answer them. Frankly, I would like to read that answer myself, or that statement, myself, before discussing it.

Mr. Clarke:

Mr. Shaw, maybe this question will clear it up. Were there any levies made for payment on old bonds without first having to exchange them for the refunding bonds, and the payments to be made on the refunding bonds?

A. There is nothing in our levies or our records that would prevent the payment of that portion of the levies applicable to the unrefunded bonds to those bonds if a proper mechanics could be set up to do it. What we have done is to levy for all of our debts upon the same basis, segregating and paying to the refunded debts the portion applicable thereto, and holding in reserve for the unrefunded debts the portion applicable to them.

Mr. Clarke:

Well, you won't pay that reserve to them unless they first exchange for the refunding bonds; isn't that correct?

A. I do not say that will not be done, but before that is done voluntarily I must be thoroughly satisfied as to the mechanics and as to the method of securing credit upon the securities.

Mr. Clarke:

Well, in the past that hasn't been appropriated for that purpose, has it?

Mr. Adams:

If the Master please, I object to this. There are official records of the levy ordinance that these questions are calling on the witness to interpret; they are official records, and are available, and can be put in the record for the Master to put his own interpretation on it.

The Master:

Well, I think the official record would be the best answer to all of these questions.

Q. Then, Mr. Shaw, will you produce copies of the levy ordinances for the last three fiscal years, 1937-38, 1938-39 and 1939-40?

Mr. Gibson:

And will you also produce a showing of any payments made to any holders of unexchanged and unrefunded bonds from these levies during said years?

A. I can state simply—

The Master:

Hasn't that been covered in Mr. Berry's examination?

Mr. Gibson:

I don't know; if it has, I don't know it.

The Master:

How about that, Mr. Berry?

Mr. Berry:

Not entirely, no.

The Master:

Mr. Shaw, let me ask you a question.

A. Yes, sir.

The Master:

Has there been any levy for the specific purpose of paying interest on the unrefunded bonds and for no other purpose?

A. Yes, sir. Not at the rates called for by those bonds, as they are now outstanding, but at the same rates which applied to the bonds which have been refunded.

The Master:

That's all.

Mr. Gibson:

May I ask you a question there. Have the proceeds for any such levy ever been made available to the holders

of unrefunded bonds without their first being required to exchange their bonds for refunding bonds?

A. No such payments have ever been made, and to my knowledge no demand for such payments have ever been made.

By Mr. Warren:

Q. Mr. Shaw, do you recall the suit of the American National Bank for $95,000.00 out of the funds levied for the refunding bonds?

A. Yes, sir.

Q. Seeking to obtain?

A. Yes, sir.

Q. Now, the Court said that they were not applicable, didn't it?

A. I believe so.

Q. Now, was that suit not amended and the reserve not applicable for refunding bonds outstanding sought in payment of a portion of that $95,000.00?

A. I had forgotten, if it was, Mr. Warren.

Mr. Adams:

We object to this; the records of the suit are the best evidence, and we are going to get into a mess if we don't get them.

The Master:

Well, we hardly want to bring a record of a case in here if we can avoid it. Let the witness answer the question.

A. My recollection of the amendment of that case is not sufficient to answer without first having gone back to the documents of the case, or of having asked the City Attorney just what the matter was. I do not attempt to follow in great detail the legal end of things.

Q. Now, Mr Shaw, in a letter dated February 24th—a printed letter, signed by the City of Coral Gables, by you, G. N. Shaw—

Mr. Adams:

What year, please?

Q. February 24, 1940. I will ask you if that was a letter sent out by the City of Coral Gables? (Exhibiting same to witness.)

A. It was.

Q. You are familiar with the contents of that letter?

A. I wrote the letter, but I had better re-familiarize myself with it (reading same).

Q. Now, Mr. Shaw, at the time this letter was written, had the City enacted a resolution directing the filing of a bankruptcy petition?

A. February 24th was the date, was it not?

Q. February 24th, 1940.

A. No. Ordinance No. 347, which is Petitioner's Exhibit No. 11, was first submitted and read at the Commission meeting of February 20th, and was finally read and adopted at the meeting of March 5th, 1940. I don't recall any other resolution.

Q. Mr. Shaw, had there been a resolution passed at the time this letter was sent out that the City of Coral Gables was insolvent and unable to meet their then debts as it matured?

A. Such an ordinance was before the Commission and adopted on first reading at the time of the writing of that letter.

Q. Has there ever been an ordinance or resolution of the City of Coral Gables that is was, at the time just immediately prior to the filing of a suit for bankruptcy, insolvent or unable to meet its debts as it matured, at the time of the enactment of the resolution?

A. The only answer I can possibly give to that is that Ordinance No. 347 stated: "And the City is unable to meet said past due debts and the other debts as they mature, and it desires to effect a plan for a composition of its said indebtedness".

Q. Mr. Shaw, that wasn't a finding on the part of the City, was it?

The Master:
That calls for a matter of interpretation, I think Mr. Warren.

Mr. Warren:
I agree with Your Honor. I won't go any further along that line. I don't imagine, if the Court please, we would have to put that in evidence; a copy is attached to the Petition.

The Master:
The ordinance is already in the record?

Mr. Warren:
Yes; it is in the record.

Mr. Adams:
Yes; it is in as Plaintiff's Exhibit No. 11.

(At this juncture there was an off-the-record discussion had between the witness and counsel concerning certain documents produced which had been requested.)

Mr. Berry:
We now offer as Defendant's Exhibit No. 21, and as a collective exhibit, all of the letters and other papers sent out by the City of Coral Gables to creditors, or some of the creditors of Coral Gables asking consents and proofs of claim, consisting of 16 pages.

The Master:
Is there any objection?

Mr. Adams:
No, sir.

The Master:

They may be admitted.

(Said instruments, collectively, were marked as Defendant's Exhibit No. 21.)

Q. In the first paragraph of this letter dated February 24, 1940, Mr. Shaw, appears the statement: " * * * the holder of $252,000 of these bonds has announced his intention to attempt to recover full principal and accrued interest". Who was that creditor?

A. I referred there to bonds of which I am not sure of the owners. My first knowledge of those bonds were as of the ownership of Ed. C. Wright. Certain rights to some of them, or some interest therein seems since to have appeared in the hands of the American National Bank.

Q. Now, how was that intention to attempt to recover for full principal made known to the City of Coral Gables?

A. I would say by the filing of a suit to enforce the payment of the interest coupons at their full value.

Q. Then there was no formal announcement that he intended to enforce the full payment?

A. No formal announcement, no.

Q. Then that statement in the letter is incorrect isn't that right?

A. No, I would not say it was incorrect.

Q. But it just doesn't tell the whole truth; is that right?

A. No, I would certainly not put it that way.

Q. How would you put it?

A. I would put it that a very determined effort had been made to collect a portion of the claim at full value, which in itself was an announcement of future intent.

Q. And you construed that to be an announcement?

A. That is correct.

Mr. Adams:

If Your Honor please, pardon the interruption. A gentleman came in with Mr. Gibson this morning. I don't know whether he is going to be a witness or not. He called for the rule as to the other witnesses, and we would like to know.

Mr. Gibson:

That shouldn't worry you, because if I go to put him on as a witness you can then object.

Mr. Adams:

He will or will not be?

The Master:

Counsel is entitled to know whether he is a witness or not.

Mr. Gibson:

I say, if I go to put him on as a witness, he can object.

The Master:

I say counsel is entitled to know now if he is going to be a witness, and he will be excluded if he is, but will—

Mr. Gibson:

He will not be used as a witness.

Mr. Adams:

Maybe we better record his name so we will know who we are referring to.

Mr. Gibson:

How much do you want to record about him?

Mr. Adams:
I want his name, for the record.

Mr. Gibson:
Mr. Richard Maxwell, attorney-at-law, That's sufficient, isn't it? I don't know his age.

Mr. Adams:
That's all I want.

By Mr. Warren:
Q. Mr. Shaw, is there anything in that letter which says that the City is insolvent as of its date and unable to pay its debts as they mature?
A. No, that statement does not appear specifically. Certainly the inference is there.
Q. From what is it inferred, Mr. Shaw?

The Master:
Mr. Warren, we are getting into interpretations again.

Mr. Warren:
I'm afraid I am, and I move to strike the answer of the witness when he says there was an inference there, because it is not responsive to the question.

Mr. Redfearn:
Let's have the question and the answer read.

(First question asked by Mr. Warren and the answer thereto were read by the Reporter.)

The Master:
Well, we will either strike the whole answer, or leave it as it stands, Mr. Warren; which do you prefer?

Mr. Warren:

I will leave it as it stands.

Q. Mr. Shaw, is this all the information that you sent out to creditors in soliciting their consents?

A. No; I sent other letters from time to time.

Q. After this date?

A. Yes, sir.

Q. Were they form letters?

A. Those that went out, generally, were form letters.

Q. May we have copies of those?

A. Yes, sir. In order not to cause any delay, Mr. Warren, I will give you the ones I have on my file here, and then will exchange with you for copies after the others come up.

(NOTE: To clarify the record as to the foregoing matter, the letters, etc., produced by the witness at the request of Mr. Warren are the same instruments which, together with the letter dated February 24, 1940, go to make up Defendant's Exhibit No. 21, the offer of which is shown on Page 875, and upon agreement of counsel the reporter was directed to show the inclusion of all papers included in said exhibit at the point of the original offer which was only as to the above dated letter.)

By Mr. Berry:

Q. Mr. Shaw, in response to Mr. Clarke's question, you have produced Ordinance No. 293, which is an ordinance providing for the levy of taxes for the year beginning July 1, 1937, and ending June 30, 1938?

A. Yes, sir.

Q. Now, this is a copy of the original ordinance making that levy?

A. That is correct.

Mr. Berry:

I ask that you file this copy of Ordinance No. 293 as Defendant's Exhibit No. 22, Your Honor.

The Master:
Any objection?

Mr. Adams:
No, sir.

(Said instrument was thereupon marked in evidence as Defendant's Exhibit No. 22.)

Q. I now have Ordinance No. 311 which you have handed me, providing for the levy of taxes for the year beginning July 1, 1938, and ending June 30, 1939. Is that a copy of that ordinance?
A. Yes, sir.

Mr. Berry:
I ask that you file this copy as Defendant's Exhibit No. 23.

Mr. Adams:
No objection.

The Master:
It may be filed.

(Said instrument was thereupon marked in evidence as Defendant's Exhibit No. 23.)

Mr. Berry:
I have here Ordinance No. 328 furnished by Mr. Shaw, providing for the levy of taxes for the year beginning July 1, 1939, and ending June 30, 1940, and ask that that be filed as Defendant's Exhibit No. 24.

Mr. Adams:
No objection.

The Master:
It may be filed.

(Said instrument was thereupon marked in evidence as Defendant's Exhibit No. 24.)

Mr. Berry:
I now offer Ordinance No. 379, providing for the levy of taxes for the fiscal year beginning July 1, 1940, and ending June 30, 1941, and ask that that be filed as Defendant's Exhibit No. 25.

Mr. Adams:
No objection.

The Master:
Let it be filed.

(Said instrument was thereupon marked in evidence as Defendant's Exhibit No. 25.)

By Mr. Berry:

Q. Mr. Shaw, the ordinance which you have produced here, Exhibit 22, for the year 1937-38, shows a total levy of 5.90, being 5.78 for the first series of 1937 bonds, and .12 for the second series.

A. Yes, sir.

Q. Now, in collective Exhibit 21, the letter of August 26th shows the collections which were made. I will ask you if that represents the actual collections made that year under that levy of 5.90?

A. That is correct, Mr. Berry.

Q. Then that particular levy for that fiscal year produced $108,333.87 in actual money?

A. Within that fiscal year, yes, sir.

Q. Now, out of that fund you paid to the holders of refunding bonds dated January 1, 1937, or paid into that

special fund which you have mentioned, the sum of $103,038.40, did you not?

A. That is correct.

Q. Now, how much did you pay out in interest to holders of those bonds other than the City and other than into the fund which you have mentioned?

A. There was paid to holders of the first series bonds, $94,987.05, to the holders of second series bonds, $1,960.19, or a total of $96,947.24.

Q. Now, Mr. Shaw, the balance of the tax levy which was collected in that fiscal year of $5,295.47 was paid to certificates. By that you mean TPCs, do you not?

A. That is correct. There is also a reserve set up as to that, Mr. Berry, similarly to the reserve of interest.

Q. But to the two funds, to the holders of the TPCs—that was all distributed either to the holders or in this reserve fund?

A. That is correct.

Q. And when the payment was made to the certificates, including the reserve fund, that exhausted the entire tax collection of that year?

A. Yes, sir.

Q. And you paid nothing, and you set nothing aside for payment to unrefunded bondholders?

A. I maintain, Mr. Berry, that the reserves of both the interest and tax participation certificate dividends applicable to those bonds was set aside for their benefit.

Q. Mr. Shaw, I think we have fully in the record what that setting aside is, and what I meant is, that you set aside no fund exclusively for payment of unrefunded bonds, principal or interest, and if you like, add to it, other than this special account that we have been talking about.

A. That is correct.

Q. Then if you made a levy solely for the unrefunded bonds, nothing was collected on it for that year?

A. We did not make a levy solely for the unrefunded bonds for that year.

Q. Now, the Exhibit 21, and the letter of August 26th which I am referring to, shows the same figures in detail for the years 1938-39, 1939-40 and 1940-41, does it not, Mr. Shaw?

A. Yes, sir; estimated for the year 1940-41.

Q. And they show that the funds collected in those three years were disposed of in exactly the same way as they were in the year 1937-38?

A. Yes, sir, with the addition of the funds collected upon the delinquent taxes of those levies.

Q. What was done with the funds collected on the delinquent taxes?

A. The applicable portion of all delinquent taxes was set aside in the issue of 1-1-37 fund, I believe, and served to increase the balance on that fund at the end of the year, which was payable, or reservable on the dividends of the TPCs.

Q. Now, was that true of the year 1938-39?

A. Yes, sir. It was true in this way, that in the year 1937-38 the City had held its tax sale before the close of the fiscal year, and knew exactly what the proceeds of that sale would be; that is, the portion of them applicable to this purpose; and wishing to close its records, it advanced from other funds an amount sufficient to supply the issue of 1-1-37 fund with the expected proceeds of this tax sale. When those proceeds were received in the following fiscal year, they were used to reimburse the fund from which the advance had been made.

Q. Then as a matter of fact, the entire tax levy for debt service for the years beginning July 1, 1937 through June 30, 1940, have been expended by paying the amount thereof either in payment of coupons of the 1937 bonds, to your special reserve fund for bonds, to tax participation

certificates, and to the special reserve fund for unissued tax participation certificates?

A. Yes, sir.

Q. And there is no fund in your hands at this time other than the two special amounts which is applicable to debt service?

A. That is correct.

Q. I am not attempting to be technical, that general funds cannot be compelled to be used for that purpose, but I mean, levied for that purpose.

A. Yes, sir.

Q. Mr. Shaw, for the three succeeding years to 1937-38, would the division of payment which you have described for the year 1937-38 be the same if we take into account exchanges of bonds which have occurred since that date, and cancellations of bonds which have occurred since that date?

A. Yes, sir.

Mr. Berry:

That's all right now.

Cross Examination.

By Mr. Lea:

Q. Mr. Shaw, as you made your levies each year for the so-called special issue referred to in the Defendant's Exhibit No. 11, did the City issue to itself refunding bonds and tax participation certificates for the amounts so paid those creditors each year?

A. No, sir.

Q. Are you familiar with the audit submitted to you on October 5, 1939, by your accountants?

A. Yes, sir.

Q. As a matter of fact, they state in that audit that you intend to issue yourself bonds for a refundable portion of those claims, did they not?

A. They include in that audit a gratuitous discussion of the question of whether or not that should be done, and state an intention to do so. That statement was incorrect. As a matter of fact, some years ago the question was raised as to whether that might be done, as I have just answered, Mr. Clarke; we have never gone into it from a legal standpoint. We have never taken any step toward doing it. I discussed it with the auditors to get their technical view upon it, and they saw fit to include it in their comments.

Q. So that as you have paid each year on those various judgments, you have cancelled the proportionate part of the judgments?

A. I don't believe there has been any definite cancellation of the judgments. However, we have set up on our books an offset to the judgment account by the amount that was paid.

Mr. Clarke:

Is it your intention to cancel the judgment when it is paid in full—if and when it is paid in full?

A. Yes, I think so, Mr. Clarke.

Mr. Clarke:

Can I count on your doing it?

A. Unless somebody tells me it is strictly legal and proper to do as the auditors implied we intend to do, which was based purely on a technical discussion on the proposal, it will not be done.

Mr. Clarke:

All right.

By Mr. Lea:

Q. Will you please refer to Section 19 of Ordinance No. 269, and tell me whether or not the City has acquired

for its own account refunding bonds or tax participation certificates under that section?

A. You mean whether the City has acquired for its own account refunding bonds or tax participation certificates out of monies developed from other sources than the issue of January 1, 1937?

Q. That is correct; yes.

A. Do you want me to give a general answer, or do you want me to state the extent?

Q. I would like to have the number or the amount of bonds in that fund.

A. Such items appear in Defendant's Exhibit 8, designated by the letters "C"; "paid by City from Coral Gables Development Company purchase of 1936 taxes"; "D": "paid by City from General Funds"; "E": "Paid by City from Trust Funds"; and "F": "Paid from Special Levy".

Q. Mr. Shaw, will you refer to Section 12 of Ordinance No. 269 and point out to me the authority to purchase tax participation certificates by the City, under authority of that section?

A. Section 12 of Ordinance 269 does not mention the purchase of tax participation certificates, and therefore does not authorize or forbid the purchase of those securities by the City.

Q. You did, then, under that section, purchase tax participation certificates as set forth in Defendant's Exhibit No. 8 at the appropriate places referred to there?

A. I would not say that we purchased the tax participation certificates under that section. The bonds which we purchased were under that section. The purchase of tax participation certificates by the City is only referred to, I believe, in Section 19.

Q. Will you please refer to Defendant's Exhibit No. 11 and note the statement of "Debt Service Expense" is included in your debt service levy? Will you please state what that debt service expense is?

A. The trustee-bank fees and a part of the expense of the assessment, levy and collection of taxes, and the necessary accounting. That is a portion of the expenses of the assessor's office and of the finance department.

Q. That, then, includes a part of your operations of the finance department, and part of the assessor's department?

A. Yes, sir.

Q. And expenses in connection with the tax participation certificates in New York? Is that correct?

A. Yes; the tax participation certificates and interest payments.

Q. And you levy that against all property?

A. All property, yes, sir.

Q. As a matter of fact, that really is operations, isn't it, Mr. Shaw?

A. It is, in a sense, operations, and in another sense is debt service, and by many cities has been construed as being a proper part of the debt service levy, and therefore applicable to all property. The theory is that if we did not have these debt problems, the matter of assessment and collection would be much reduced. If we did not have city operation, there would certainly be expense attached to the assessment and collection of the debt service levy, or levies.

Q. The only difference being that by including it in the debt service levy you levy it against all property.

A. That is correct. It does not—

Q. So actually, as far as the bondholders are concerned, that could be taken away from what you have set up as your total debt service levy?

A. So far as the bondholders or other creditors are concerned, this has no effect whatever upon his levies or payments. This is a matter entirely between the City and its taxpayers.

Q. But it does make your debt service levy look larger, does it not?

A. Yes; but if it were removed to the operating side, your operating picture would be unduly large.

Q. Now, reading right above that, I note the words "Tax Discounts". Does that include discounts of all taxes, operations and debt service?

A. No, sir, only the debt service portion. Discounts on operating taxes are set up in connection with the current operating expense levy.

Q. Your total levy since the year 1937 has been 22 mills?

A. Yes, sir. The original levy for 1937 was for a higher amount, but later adjusted to 22 mills.

Q. Have you ever attempted to increase your millage and pay off this unrefunded indebtedness?

A. This record shows that we have not attempted a millage beyond 22. However, we had the experience of increasing our millage from 19, I believe, to 22, and that experience certainly operates in part against a further attempt.

Q. Is it your intention, then, to keep all of your levies at 22 mills?

A. It is my opinion that any further advance in taxes would be of serious consequences to the City, both in its operations and to its creditors.

Q. Mr. Shaw, did you state a moment ago that the first reading of the ordinance authorizing the City to go in bankruptcy was read during the month of February, 1940?

A. I believe the date was February 20th, 1940.

Q. And that was the first action taken by the City toward the filing of the petition?

A. The first formal action.

Q. Prior to that time you had made agreements with Fiduciary Council, Lois Harmon, C. J. Root, and who else, if you recall?

A. We had made agreements with Fiduciary Council, Inc., and C. J. Root, but none with Harmon or the others.

Q. You had no agreement from any other person to purchase a judgment in periodic payments?

A. Not to purchase a judgment in periodic payments. We did have the escrow agreement, which I have fully described, in the Sarah McGuire matter, known as the Everling-Cornman—City of Coral Gables agreement, which was an agreement to purchase certain refunding bonds at periodic intervals.

Q. You had no written agreement with G. E. Vallette?

A. None.

Q. You had no written agreement with Lois Harmon?

A. None.

Q. You had no written agreement with W. J. Noel?

A. None.

Q. You had no written agreement with Henry Thies?

A. The Thies matter had been entirely concluded, in my understanding, on October 19, 1937.

Q. Mr. Shaw, who was present in the City Commission meeting of August, 1939, at the time you previously testified that Mr. Roberts and some other person was here, in which a tentative agreement was made or was discussed relative to those holdings of Ed. C. Wright & Company, and American National Bank?

A. That seems to have been a conference, Mr. Lea, of which no formal minutes were made. I probably have in my file memoranda which will confirm my recollection that there was at that meeting Paul D. McGarry, Hollis Rinehart, Jr., Joe W. Whitley, and P. J. O'Shaughnessy, the first being Mayor and the others commissioners; Mr. Adams, the City Attorney, Mr. Williams, the City Manager, myself, Mr. Wright and Mr. Roberts.

Q. I believe you stated that at that time the whole City Commission was not unanimously—or the inference you left, as I gathered it, that the whole City Commission wasn't unanimously in favor of the proposition.

A. That is correct; and later rejected the proposition, and I believe was unanimous in that later rejection.

Q. When was that later rejection?

A. I could not give you any exact date, Mr. Lea. I don't know that there is any record of that date. Several of the Commissioners were out of town subsequent to that meeting to which we have referred, and there were conferences by telephone, and exchanges of letters, but I wouldn't know how to pin it down to the date.

Q. Mr. Shaw, did the City of Coral Gables make any donations to the University of Miami during the year 1930-31?

A. Yes, sir.

Q. State the amount, and give that for each year since that—

Mr. Clarke:

And will you state the source of that, please?

A. What was that?

Mr. Clarke:

He asked for the amount and the year, and I asked for the source, if you have it.

A. As to the source, I can only say, from the general revenues and incomes of the City.

Mr. Clarke:

Taxes?

A. Taxes, licenses, departmental accruals, and what have you. In the year 1930-31, $35,000.00; in the year 1931-32, $25,000.00; in the year 1932-33, $25,000.00; 1933-34, $25,000.00; 1934-35, $25,000.00; 1935-36, $25,000.00; 1936-37, $25,000.00; 1937-38, $25,000.00; 1938-39, $25,000.00; and 1939-40, $25,000.00.

By Mr. Lea:

Q. Do you know whether any of those funds are the result of tax levies made by the City of Coral Gables for that purpose?

A. They probably are. They were paid from the general fund of the City, comprising both tax levies and the other various revenues of the City.

Q. As a matter of fact, each year you budgeted that sum for the University, did you not, in your annual budget?

A. Yes, sir.

Q. Mr. Shaw, do you know the per capita wealth of the City of Coral Gables?

A. The per capita personal wealth, I do not.

Q. The per capita wealth.

A. I do not.

Q. Can you give that on this basis; as reflected by your assessed valuations for your real property and personal property as compared to your population for 1940?

A. Yes. $3,078.00, approximately.

Q. Do you know the average per capita wealth of the forty Florida cities for 1935?

A. I do not, off-hand.

Q. Do you know the average of 40 Florida cities for 1940?

A. I can give it later; I can get that data but I do not have it here.

Q. Mr. Shaw, when you testified as to the average per capita of 40 cities in 1930 at a previous hearing, you had secured that information from some book?

A. I had, Mr. Lea. I took that data from figures prepared by me from census and other sources in the years—during the years 1932 to about 1934. I have not found in my files the exact source of that data. I have, however, made a more recent check of other official data bearing upon the same figures, from the Department of Commerce, Financial Statistics of State and Local Governments, issued in the year 1932, and printed by the United States Government printing office, and—

Mr. Lea:

Just a minute; read the question, and his answer.

(Question and answer read by the Reporter).

Mr. Lea:

I believe that answers my question.

Q. How many negroes did you have in the City of Coral Gables in 1930?

A. I do not have that available here for the year 1930, but do have it as it appears in the State census of 1935.

Q. That will be satisfactory.

A. The 1935-36 census of the State of Florida shows a total population of 6,747, made up of 6,224 white and 523 colored.

Q. Do you have those same figures for the year 1940?

A. Not yet.

Q. Do you know how the most of those colored people live? Are they servants, and so forth?

A. Our colored section is a part of the same colored section which extends a considerable distance into the Coconut Grove section of Miami; our negroes work as servants here in the Gables and elsewhere; some are employed in the parkways and garbage disposal divisions of the City; and others, I believe, work as gardeners here and there throughout the county.

Q. Do you have about the same proportionate negro population in 1940 as you had in 1935?

A. I should think so, Mr. Lea.

Q. Do you know how many people were on relief in the City of Coral Gables in any of the years from 1935 to 1940?

A. I do not know as to number. We had a considerable relief problem here at one time, but what percentage of the population, I could not say.

Q. As a matter of fact, the City of Coral Gables is a very much higher type of community than most any community in the State of Florida, isn't it, Mr. Shaw, so far as its citizenry is concerned?

A. I think we can admit that without harm, Mr. Lea.

Q. As a matter of fact, most of the professional men of Miami, Doctors, Lawyers, and other professional men, or a great many of them live in the City of Coral Gables, do they not?

A. I would not like to say that a great many of them live in the City of Coral Gables. The population of the City of Coral Gables is only a small part of the metropolitan Miami Population, and I know of many such people who live in Miami Shores and Miami Beach, and in the better sections of Miami. I would say that Coral Gables compares with the Coconut Grove and Silver Bluff sections of Miami; it compares with Miami Shores and with Surfside; with certain portions of Miami Beach; and with Miami Springs; and outside of this area, with certain other towns that might be put in this same category; but it does not compare with the average city.

Q. It is higher than the average is it not?

A. That is correct, sir, in debt problems and in everything else. And may I exclude from that, bank balances.

Mr. Gibson:

That also goes to the ability of the average citizen to pay, does it not?

A. I think that holds true, Mr. Gibson, but in making that answer I would also have to say that even as it is proposed to be adjusted by this Petition, the debt and the debt service requirements of the City of Coral Gables are not inconsistent—

Mr. Gibson:

I think you have answered.

Mr. Adams:

Let him finish his answer.

Mr. Gibson:

That's all I'm looking for.

A. (Continuing) —are not inconsistant with its excellence in other directions, and are higher—much higher than the other cities with which it may be compared.

Mr. Gibson:

What is much higher, Mr. Shaw?

A. Mr. Gibson, I will be glad to answer that question. I can bring in figures as to those other cities, which I will be glad to do.

Mr. Gibson:

I say, what is it you are referring to that is much higher?

A. Well, in three of the cases of which I have mentioned, there is no debt and no debt service requirement.

Mr. Gibson:

What is it you are referring to? What is it that is higher?

A. Those three cases were Surfside, Miami Shores and Miami Springs.

Mr. Gibson:

Your Honor, I asked him the ability to pay, and he gets onto the debt service problems of other cities, and their assessed values and debt and one thing and another. I request that that portion of his answer be stricken as not responsive. It is burdening the record. I asked a simple question, and it calls for a simple answer.

The Master:
Let the answer stand. If you have any other question, ask it.

Mr. Gibson:
That's all.

By Mr. Lea:
Q. Mr. Shaw, do you know what percentage of the homes in Coral Gables have an assessed value of more than $5,000.00?
A. Yes, sir; 49.62% of the homes and other buildings in Coral Gables have a value greater than $5,000.00, as shown by the 1939 assessment roll.
Q. Is that percentage based on the number of houses, or on the number of buildings, or on the total assessment?
A. On the number.
Q. Mr. Shaw, can you give me the exact date that the exchanges were made in New York?
A. The exchanges commenced about September 1st, 1937, or perhaps within the week preceding, and continued at various dates thereafter.
Q. You made no exchanges until after the Supreme Court had validated your bonds on August 26th, 1937, approximately?
A. That is correct.
Q. You made no exchanges prior to that time?
A. There were none made prior to that time.
Q. Did the City of Coral Gables write the so-called Barker Committee a letter, or communicate with it in any way, that sufficient consents had been executed to the plan, and that exchanges could then be made? That is, pursuant to Paragraph 1 of the agreement entered into on the 3rd day of February, 1937, between the City of Coral Gables and the Bondholders' Committee? I don't

know the exhibit number; I wasn't here the last time. (Examining exhibits). That's Defendant's Exhibit No. 2.

A. Such a letter may have been written. I would have to refer to the files.

Q. Do you know whether or not such a letter was written?

A. Not off-hand.

Q. Will you refer to the files?

A. Yes, sir.

Q. Do you know whether or not the City received a letter from the Committee regarding this same transaction?

A. Not without reference to the files, no, sir.

Mr. Lea:

That's all right now.

By Mr. Clarke:

Q. Mr. Shaw, at a previous meeting you were asked to bring a copy of the Minutes of the meeting of the Commssion, acting as a Board of Equalization, at the time there was a blanket reduction of assessed valuations in the City of Coral Gables. Did you bring such a copy?

A. I did, sir. That was not exactly a blanket reduction. It was an application of depreciation and obsolescence to property constructed in certain years, and at percentages varying with the age of construction.

Q. Will you refer to the minutes now of the meeting of the City Commission of July 26, 1939, wherein there is a reference to that subject, and state what the records show as to that subject?

A. The Minutes of the meeting of the City Commission on July 26, 1939, at which all were present, contains the following: "The Commission then recessed, convened as an equalization board, and instructed the tax assessor to base his roll upon the John C. Donehoo appraisal, as

amended by the J. Allen Brown Committee of Coral Gables Realtors, and appointed 4:00 o'clock P. M. on Tuesday, September 5th, for the next equalization board meeting".

Q. Was that action taken before or after this meeting of the Board of Equalization of which you have brought a copy here?

A. That was two days after this equalization meeting.

Q. This is a copy of the meeting of the Board of Equalization of July 24, 1939? (Referring to document produced by witness).

A. That is correct, sir. And let me draw this distinction. That this reference to the roll in the equalization board meeting appearing in the minute book as of July 26th, was to a revaluation of the vacant property, to to bring it in line with the market trends. The conference in the equalization board meeting of July 24th was to the improved property.

Mr. Clarke:

I would like to offer in evidence the certified copy of the Minutes of the Meeting of the Board of Equalization dated July 24, 1939, as the Defendant's Exhibit No. 26.

Mr. Adams:

No objection.

The Master:

It is admitted.

(Said instrument was thereupon marked in evidence as Defendant's Exhibit No. 26.)

Q. Was the change in the tax roll referred to in the exhibit you read into the record, from the July 26th meeting, a general reduction or increase as to vacant property?

A. It was not general in any way. It increased the unit value in some sections, and decreased them in others, as the necessity for change was indicated by market trends. I do not believe that the roll was very much affected by the net result.

Q. The roll was affected by the net result of the action of the Board of Equalization as to improved property on the July 24th meeting?

A. Yes, sir.

By Mr. Warren:

Q. Mr. Shaw, at that same meeting of July 26, 1939, is there any reference to a conference with Mr. Roberts?

A. There is, Mr. Warren.

Q. Will you read that into the record?

A. I believe that I previously testified that that was simply a conference, and that probably no minutes had been written. I also omitted, in my statement from recollection, the name of Commissioner O'Shaughnessy as one of those present, I believe. It was my recollection he had been out of town at the time. I find at this meeting of July 26th, at which all commissioners were present, the following statement: "The Commission conferred with Mr. Albert Roberts, Jr., concerning certain outstanding and unrefunded obligations, expressing approval of a plan of action suggested by Mr. Roberts, and requested him to put the terms of the plan in definite form and resubmit it for the possible approval and action of the Commission". I do not see Mr. Wright's name as present at that time, at that meeting, but I was under the impression that Mr. Wright was also at that conference, and beleive I previously so testified.

Mr. Warren:

That's all.

By Mr. Lea:

Q. Mr. Shaw, a few moments ago you testified that you had no agreement of purchase from one Lois Harmon who recovered a judgment in the United States District Court under Case No. 2466-M-Civil. Do you wish to change that now?

A. That was and is my recollection, Mr. Lea.

Mr. Lea:

Just let me state in the record that Mr. Shaw was mistaken, or misunderstood the legal effect of that case, and we now wish to stipulate what happened in that suit.

(Thereupon, an off-the-record discussion was had between counsel, resulting in the following):

Mr. Adams:

It is now Stipulated by counsel for the respective parties hereto that in the Lois H. Harmon suit pending in the United States District Court for the Southern District of Florida, Miami Division, No. 2466-M-Civil, final judgment was entered in the amount of $7,265.90, plus costs in the amount of $13.00, on April 13, 1938; Petition for Alternative Writ of Mandamus was filed, and an Alternative Writ of Mandamus issued in the cause for the full amount of the judgment on May 11, 1938; on May 13, 1938, Stipulation was filed between the Plaintiff and the Defendant City of Coral Gables, agreeing to the terms of the peremptory writ, and pursuant to that Stipulation, on the same day, Peremptory Writ of Mandamus was issued requiring the payment of the full amount of the judgment in spread levies, the first to be made in the fiscal year commencing July 1, 1938, in an amount sufficient to pay one-seventh of the principal amount of the debt, and continuing until fully paid, with interest at the rate of 3½% per annum, and service of the Peremptory Writ was accepted by the City Attorney.

Mr. Lea:

That's all right.

Q. I would like to call on Mr. Shaw to produce the written agreement, if any entered into by Lois Harmon and the City of Coral Gables on the 13th day of May, 1938. It is my understanding that it is not known at the present time whether or not there was a written agreement, but if there was, I want it produced.

A. Mr. Lea, the files to which I went the other day to secure these agreements and satisfactions and assignments did not contain any such agreement, and I do not remember one ever having been delivered to me. I think that probably such an agreement was between the attorneys, rather than an official document of the City. I will search my files, however.

Mr. Lea:

That's all.

By Mr. Gibson:

Q. Mr. Shaw, what has happened to the Harmon account? Has the City bought the balance of his bonds?

A. No, sir; the City has paid on the Harmon account the amounts developed by the special levy therefor through June 30, 1940. He stands in exactly the same position except as to amount as the other judgment mandatory levy writ creditors stand.

Q. What is the agreement that now exists between the City and that creditor with regard to the disposition of his claim?

A. None other than that stipulation which has just been introduced here. We have no special agreement with Mr. Harmon.

Q. Will there be such an agreement in existence and you not know it?

A. Well, there could hardly be one.

Q. What I'm getting at, Mr. Shaw, is, it is significant that creditor is not represented here, and I am wondering what has happened to him.

A. There are other creditors not represented here, Mr. Gibson.

Q. In that same classification?

A. Mr. W. J. Noel and C. G. Vallette.

Q. In that same classification?

A. Yes, sir, in that same classification.

Q. What agreements exist between those parties and the City at this time.

A. None.

Q. Neither one of them?

A. No, sir.

Mr. Gibson:

All right.

By Mr. Lea:

Q. Mr. Shaw, I forgot to ask you whether or not you had any objections by any taxpayer to any levy for the $25,000.00 donation to the University of Miami?

A. Do you mean existing or past objection?

Q. Past objection, at any time.

A. Yes, sir, there have been objections. As a matter of fact, at one time about—I do not recall the year—but approximately 1933 or 1934, a suit was brought attempting to enjoin the City from making that contribution.

Q. Do you know the disposition of that suit?

A. Yes, sir; my recollection is that the suit was dismissed by the Court and the injunction was not granted.

Q. You don't know the reason, though?

A. I don't recall the details of the suit.

Q. And during this time that you were donating $25,000.00 a year to the University of Miami, you were paying no bondholders but the Bondholders' Committee, as previously testified by you?

A. That is correct, sir. All of the bondholders who had—or their representatives who had studied the City's affairs agreed that for business and promotional reasons, for both the City and its creditors, the support of the University should be continued.

Mr. Berry:

I move that answer be stricken; it is a pure supposition of what was in the mind of the non-assenting bondholders.

The Master:

Mr. Shaw, do you mean by that that they actually agreed to it?

A. Yes, sir. I mean that they expressed that agreement, and it appears as a permissible expense in the first two or three refunding plans.

Mr. Gibson:

Mr. Shaw, do you mean all the bondholders or some of the bondholders?

A. I said, those bondholders, and I would like now to qualify that by saying, who to my knowledge studied the situation. I meant by that, the Bondholders' Protective Committee, and at least one minority group who sent investigators to Coral Gables to make an on-the-ground study of the situation.

Mr. Gibson:

But you don't mean to infer that all bondholders who did make a definitive study of the situation agreed to it, do you?

A. No; I have just qualified that by saying, all who to my knowledge made a study.

The Master:

The motion to strike is denied.

Mr. Lea:

Mr. Shaw, do you know whether or not the University of Miami is a private or public corporation? Just answer the question, whether you know or not.

A. The University of Miami is a private corporation for the purpose of conducting an educational institution not for profit.

Mr. Lea:

That's all.

The Master:

Gentlemen for the defendants, are you prepared now to say when you will be prepared to cross examine Dr. Reed?

Mr. Gibson:

I don't think so, until we have a conference; we will give him ample time to get down here.

The Master:

All right; we will adjourn now until 10:00 o'clock tomorrow morning.

(Thereupon, at 5:00 P. M., the hearing was adjourned, and was re-convened at 10:00 o'clock A. M., on the 27th day of March, A. D. 1941, at which time the following proceedings were had:)

978 G. N. SHAW was recalled as a witness on behalf of the Petitioner, and being still under oath, further testified as follows:

Re-Direct Examination.

By Mr. Adams:

Q. Mr. Shaw, on yesterday you were questioned about the Lois Harmon judgment in the Circuit Court, and asked

to produce the contract referred to in the Stipulation filed in that Court as the premise for the peremptory writ. Have you found that contract?

A. I have, Mr. Adams. In my testimony yesterday I had completely forgotten the existence of this contract, and had this Lois Harmon matter confused with the circumstances of the G. E. Vallette judgment. I have now a copy of a contract between the City of Coral Gables and A. Judson Hill, as attorney for Lois H. Harmon, under date of May 13, 1938, by which the spread of the Harmon judgment was made over a period of seven years at an interest rate of 3½%. The matter with which I had this Harmon judgment confused was the judgment of G. E. Vallette, in which the Court handed down a Writ with two alternatives, one, the payment by the City of one-sixth of the judgment together with interest and costs within the fiscal year in which the judgment was issued, and, the spread of the judgment thereafter upon a six year basis; two, the City failing to make the above-stated one-sixth payment, the judgment to be spread upon a four year basis.

Q. Have there been any refunding securities issued on account of the bonds and coupons involved in the Harmon suit?

A. None, Mr. Adams.

Mr. Adams:

That's all.

Re-Cross Examination.

By Mr. Lea:

Q. Mr. Shaw, is this the only contract that you have with Lois Harmon?

A. It is.

Q. Did she execute any other assignment or satisfaction to the City?

A. Not to my knowledge.

Q. Do you know whether or not this judgment has been satisfied of record?

A. The judgment has not been satisfied of record, since the mandatory writ upon that judgment is still in operation and the judgment is not completely paid.

Q. This is the only agreement that you have with her, then?

A. Yes, sir.

Q. Prior to the time that you made the levy for this contract, you made no voluntary levy for these bonds in there, did you?

A. No, sir, we did not.

Q. And you did increase your millage to take care of this contract, did you not?

A. We did.

Q. And do you increase the millage also for Ashton, Fiduciary Council, Noel, Root, Steiner and the others?

A. Not for Steiner, Mr. Lea.

Q. Well, all of the others but Steiner, for each of those years you increase your millage?

A. Yes, sir.

Q. You never voluntarily increased your millage except through contracts or Court order; is that correct?

A. That is correct.

Q. At a matter of fact, Mr. Shaw, for the years 1938, 1939 and 1940, your millage, if you take away your debt service millage—if you take away the debt service expense set forth therein, it is less than eight mills, is it not?

A. Yes, sir.

Q. So if any agreements or tentative agreements had been made with others, and carried out, you would have had to increase your millage, would you not, to have carried them through?

A. Yes, sir.

Q. I believe your minutes of the date of July 26, 1939, at which time the minutes reflect the following action having been taken: "The Commission conferred with Mr. Albert Roberts, Jr. concerning certain outstanding and unrefunded obligations, expressing approval of a plan of action suggested by Mr. Roberts, and requested him to put the terms of the plan in definite form and resubmit it for the possible approval and action of the Commission"—is it not a fact that any plan submitted by any unrefunded bonds by Mr. Roberts would have required an additional millage?

A. Mr. Lea, my recollection of Mr. Roberts' proposition to the commission at that time was that if he were given time, that he thought he could consolidate all of the unrefunded claims against the City, including the judgments, and combine them into a refunding which would not increase the millage then being levied.

Q. And that was what the City had accepted?

A. That was what the City thought might be a good thing.

Mr. Lea:

That's all. I would like to submit at this time the contract which we called on you to produce, and have it admitted in evidence as Defendant's Exhibit No. 27.

Mr. Adams:

No objection.

(Instrument tendered was marked in evidence as Defendant's Exhibit No. 27.)

By Mr. Warren:

Q. Mr. Shaw, yesterday there was some reference made to the J. Allen Brown amendment to the Donehoo appraisal. What was that?

A. I will have to describe the action of the Commission that year in connection with assessments at some length to explain that. As has been previously brought out, the Commission that year undertook to bring its assessment rolls as nearly as possible in line with actual current value, both as to improved property and as to vacant property. Mr. Donehoo was called in to consult with the assessor, and I believe he made certain recommendations on the vacant property as well as on the improved. The Commission had set up a committee of realtors, headed by J. Allen Brown, to advise the assessor upon market trends in the various sections of the City. Some of the recommendations and some of the data furnished by this committee of realtors differed from Mr. Donehoo's suggestions, which, of course, were based on a brief study, and the intent of the commission was to combine the two as far as possible, but to give weight to the more intimate knowledge of the situation by the realtors' committee. That applied only to the vacant property.

Q. Wherein did Mr. Donehoo and the Brown committee differ?

A. That I do not know, sir. It was on minor points, and I do not know that that information would even be readily available. The recommendations were incorporated into the final roll.

Q. Is that the reason, Mr. Shaw, that the assessed valuation for 1939-40 dropped to $24,000,000, in round figures, from $25,000,000 in 1938-39, despite building permits of $1,195,000?

A. No, sir. That was not the reason. The recommendations of the realtors' committee, which has been mentioned as the J. Allen Brown Committee, did not cause that effect. It is my recollection that the net result of the changes in the vacant property roll that year produced a slight increase. The reduction of the roll that year was purely brought about by the application of

depreciation and obsolescence to the improved property, and incidentally, that depreciation and obsolescence was figured on the building value only, and the value of the land underlying the buildings was not disturbed where a changing tendency in the land value in that neighborhood was not found.

Q. Was that in accordance with Mr. Donehoo's formula?

A. You are speaking of the application of depreciation?

Q. Depreciation.

A. I believe it was entirely so, and I believe it was figured as it had been figured in the revaluation of 1934-35, in which Mr. Donehoo collaborated.

Q. Mr. Donehoo didn't recommend that the depreciation, instead of being 16% for 1935, be 16% for 1933?

A. I am not sure as to that, Mr. Warren. Mr. Donehoo conferred, I believe, with the equalization board and with the assessor. I knew what was the final results of that conference, but I am not thoroughly familiar with the details of that conference.

Q. Does the City of Coral Gables get any money from the county on their road and bridge tax?

A. Yes, sir.

Q. How much?

A. Approximately $8,000.00 a year, which is used for major road and bridge and other similar repairs.

Q. Did the City of Coral Gables sell the Coliseum last year?

A. It did, sir.

Q. For how much?

A. I think that the sale actually was in the final part of the year 1939, and the terms of sale were $5,000. cash, and $15,000. per year for each of three years thereafter. The operations of the Coliseum by the purchaser have not made possible adherence to the terms of that sale, and there has been a temporary amendment as to the payment due last year, in 1940.

Q. What are those funds received for the purchase budgeted to?

A. Those funds have never been budgeted. The first $5,000. received in 1939 occurred after the preparation of the budget. The money was applied to the general purposes of the City. When the 1940-41 budget was made, we were thoroughly aware that the company operating the Coliseum and which had agreed to purchase it, or had entered a contract to purchase it, was in difficulties, and thinking that we might receive no money on the contract, we made no provision for it in the budget. The wisdom of this was shown by the necessity for revising the contract.

Mr. Warren:

I believe that's all.

Mr. Clarke:

How much have you received?

A. We received the initial payment of $5,000. and we received on the due date in 1940 $2,500. to apply upon principal, and the interest due.

Mr. Clarke:

That's all.

Cross Examination (Resumed).

By Mr. Berry:

Q. Mr. Shaw, I show you the proof of claim of the American National Bank, and by consent of counsel, substituting a copy for the original, and to save time, will ask that you look at the description of the coupons therein, and from your knowledge of the records of Coral Gables, ask if they describe coupons which were attached to bonds of Coral Gables.

A. Mr. Berry, frankly I have not checked those into our records, and would be hard put to answer your question, off-hand.

Q. Well, what information is in the hands of the City that supports the allegations that these coupons were not detached from bonds executed by Coral Gables?

A. We know the coupons which were attached to the bonds, but we do not know of the authenticity of coupons which might be claimed to be owned.

Q. Have you any information that the sworn statement of the American National Bank refers to forged coupons?

A. We have no information—I have no information; but we have not examined those coupons, nor have we checked them into our records, or have been able to check them into our records to determine their possible authenticity.

Mr. Adams:

If Your Honor please, we object to this line of testimony. There is nothing in the direct examination of the witness relating to this item, and he is attempting to cross examine the City's witness as to a part of his affirmative case in defense. The pleading referred to puts in issue the question of the authenticity of the coupons, and the burden is upon the holder of them to prove it.

In the Matter of:

The City of Coral Gables, Florida.

The following is a continuation of the transcript of the proceedings had in the above cause on March 27, 1941, before F. M. Hudson, Master.

Mr. Warren:

The affirmative of the issue, as I understand it, has to prove it, so it is on you to prove it.

The Master:

I don't know exactly where the burden is, but it does look to me as though you are getting outside the realm of cross examination there, Mr. Berry. Of course, you can make Mr. Shaw your own witness for that purpose, I should think it would be better to postpone this, and when you get through with the cross examination, put it in then.

Mr. Berry:

Then, if Your Honor please, we will file, perhaps, interrogatories under the rule, but I think under Judge Holland's recent ruling we are adverse, and that can be done to find out whether or not these objections are filed in, as I consider, good faith. Now, if the Court please, the Petitioner has offered a number of consents to this plan, and at the outset of this case, on October 19th, I made objections and a motion to strike those consents on the ground they were not permitted under the Act, especially Subsection J, which motion Your Honor overruled, and we excepted to it, and without waiving our motion at that time, we desire now to go into those consents and see whether or not they are properly filed and conform to the rules of the Court, and I may refer back to the decrees in this Court that on the 27th day of June, 1940, His Honor Judge Holland entered an order that this case was properly filed and directed that all claims and interests of creditors to be affected by said plan of composition must be filed or evidenced herein by the filing of proofs of claims for such claims or interest by creditors within 60 days subsequent to the entry of said order, which would be August 26, 1940. He further provided that at that time neither the bonds nor coupons were compelled to be filed with the proofs of claim, but I think we are entitled to inspect those proofs of claim and interrogate the witness now on the stand as to

whether or not they are bona fide claims by people authorized to do their filing, and we would therefore like to have the proofs of claims here and interrogate the witness regarding them.

Mr. Adams:

Mr. Berry, to clarify the record, may I ask you this question. There are consents in the record filed with the Petition, and there are in the record proofs of claim and consents filed subsequent to the entry of the order you just referred to, by Judge Holland. Which group of papers are you referring to in your request?

Mr. Berry:

I am referring to each and every proof of claim and consent that has been filed up to the present time.

Mr. Adams:

And not to the consents filed with the petition?

Mr. Berry:

Yes; we want all of the consents filed with the petition or otherwise. If the Court please, following the entry of the decree I have just mentioned in June, there was a subsequent decree or order by the Court on December 14th relative to $18,910.97 of claims which were filed at that time, but under the order were to be considered as having been filed in July. Now, does the City claim there is any other order by the Court relative to the filing of these consents and claims?

Mr. Adams:

I don't understand your question there.

Mr. Berry:

The original order that I have just cited was entered by Judge Holland on the 27th day of June, 1940.

Mr. Adams:
Yes, sir.

Mr. Berry:
Subsequent to that time and on the 14th day of December, 1940, he entered an order that certain claims affecting $18,910.97, which were marked Exhibit "A" and which were filed with the Court on December 14, 1940, could be considered as having been filed in July. Not, outside of those two orders, does the City claim there is any other order that has been entered by His Honor, the District Judge, in this cause, affecting consents?

Mr. Adams:
The City has procured no other order. Individual creditors may have procured orders. I know there have been several orders entered at the instance of individual creditors, but I do not have copies, and am not familiar with all of them.

Mr. Berry:
There were no other general orders entered affecting the filing of claims or consents which the City insists upon?

Mr. Adams:
No.

Mr. Berry:
Now, if the Court please, we are at a point where I think we will have to ask for a ruling from Your Honor. The composition insisted upon is the one proposed as of January 1, 1937, at which time there were outstanding only those securities which we have referred to in this record as either unrefunded or old bonds. Subsequent to that time, and before the filing of this Petition, approximately 94% of those old or unrefunded bonds were taken

in by the City and canceled, and in lieu thereof or in exchange therefor, without being technical as to how it was done, but pursuant to the plan, at any rate, there were issued approximately Three and a Half Million Dollars of refunding bonds, and about Seven Million Dollars of tax participation certificates. Now, the question is, how did these various classes of securities vote. Certainly under this proceeding the refunding bonds and the tax participation certificates are not to be affected; they are to remain outstanding, in the present form, and not to be reduced. It is sought, however, to reduce in amount the original unrefunded or old bonds and the coupons appurtenant thereto, whether attached or detached from those bonds, and it would seem to me that at this time the old bonds, the coupons, the refunded bonds and the tax participation certificates all have a right to vote, and I would like to ask the gentlemen, under what theory do you expect these claims to be presented and voted; and I think Your Honor should at this time make a ruling so that we can determine whether the necessary 66⅔% of the claims to be affected, as permitted by the statute to vote, are here represented, and before going into the examination of the witness, we would like to have a ruling from Your Honor as to how that should be presented; and that, I again say, is without waiving in any way the motions which we made at the outset of this case which Your Honor overruled and to which we took exception, but we are proceeding along that line.

Mr. Gibson:

I think, Your Honor, it might be simpler for all of us if the City would advise us of their theory of the classification of these securities. It may be we will concede it is correct, and if we do, there is no use of arguing about it, and we might just as well both admit it, but if we object to their theory of it, we may have some argument.

Mr. Berry:

I might suggest this further, if Your Honor please. This is the first time that I have seen a voting attempted where the new securities issued pursuant to the plan have been divided in the peculiar way they are in this case, and I know of no particular precedent other than the mere reasoning from the meaning of the statute that we can resort to, and that's one reason why this is very serious to us at this time.

Mr. Adams:

Our theory is that there is only one class of securities involved, and that the basis of voting them is their value as of January 1, 1937, the amount of the principal and the amount of interest accrued to that date as to each unpaid bond. That is, the amount accrued and outstanding, of course. There were coupons paid prior to that time. But, to all outstanding and uncanceled bonds and coupons, their value as of January 1, 1937, plus interest on the past due bonds up to January 1, 1937. This, of course, is a proceeding under "J" for the completion of a partially completed voluntary plan of readjustment, and there, of course, are not counted securities that are held or controlled by the City, which are excepted.

Mr. Berry:

May I ask this question right now on what Mr. Adams has said. Do you concede that there must be, under whatever plan his honor may fix, two-thirds of the outstanding securities, but in that two-thirds there may not be counted the securities held by the City?

Mr. Adams:

That's right.

Mr. Berry:

Now, we have agreed on that?

Mr. Adams:

Yes.

Mr. Berry:

I think that is correct.

Mr. Adams:

I think that's correct according to the wording of the statute.

The Master:

That is correct.

Mr. Gibson:

To carry your conclusion to an exemplified conclusion, Mr. Adams, and under your theory, assuming that 66-2/3% of your consents were made entirely up of TPCs, or we will say 67% was made entirely of TPCs, and 65% was made up of refunding bonds.

Mr. Adams:

I don't think it would make any difference.

Mr. Gibson:

Do you think that that would be the 66-2/3% required under the act?

Mr. Adams:

Now, let me give you this. In our showing in the petition, the refunding bonds and the TPCs shown represent so much old bonds as of January 1, 1937, with coupons up to that date, and with accrued interest up to that date, and I think they are entitled to vote on a parity with the unrefunded bond with its interest up to January 1, 1937.

Mr. Gibson:

Now, just to get the matter clear in my own mind, under your theory, if your entire 66-2/3% vote was made up of TPC holders, would that be sufficient to enforce the plan of composition so far as consents were concerned?

Mr. Adams:

No, I don't think so.

Mr. Gibson:

Well, then, is it your theory that 66-2/3% of the general obligations should vote, and 66-2/3% of the TPCs should vote?

Mr. Adams:

Well, I don't know; I haven't gotten to that accounting stage of it.

Mr. Gibson:

We are talking about the matter of principle now.

Mr. Adams:

I know that.

Mr. Gibson:

I want to get the City's theory so I can discuss it, to see whether or not it reconciles with ours.

Mr. Berry:

We are certainly entitled to know on what theory they filed these consents.

The Master:

Well, I gathered from Mr. Adams' remarks that what they relied on was the bonded obligations before the refunding and exchange; is that right?

Mr. Adams:
Yes, sir; that's it.

The Master:
And if that's true, the participation certificates, on his theory, wouldn't come in at all, would they?

Mr. Berry:
Certainly they would; they have been exchanged, and that's a new security changed for the old, and the Act provides the holder of the new security must vote.

Mr. Gibson:
These votes and/or consents are based on consents of bonds and TPCs. Now, what we are trying to find out is, does he consider a TPC consent of equal dignity and force and effect as a consent on a general obligation bond.

Mr. Adams:
If the Court please, it may be helpful to us all to read Section "J" at this time, which is short.

The Master:
Yes, I think it would.

Mr. Warren:
In connection with that, we are not conceding this Petition is brought under "J" and we don't concede it is a plan of composition under "J".

Mr. Gibson:
Do I make myself clear to you, Mr. Adams?

Mr. Adams:
No, you don't.

Mr. Gibson:

Let me repeat it. As I understand you to say, that you are considering now these consents in their entirety, both TPCs and general obligation bonds, as representing the status of the bond before exchanged; is that correct?

Mr. Adams:

Yes.

Mr. Gibson:

And that you are required sufficiently to show into this Court consents representing 66-2/3% of the bonds as existed before exchanged.

Mr. Adams:

Yes, that's right.

Mr. Gibson:

Now then, what I am asking you was, so as to clarify the situation in my mind, under that theory, if we assume that you had the required number of consents, and this required number of consents were entirely TPCs, would you comply with the Act?

Mr. Adams:

I think this is the situation, as we understand it. The composition is a composition of the debts of the City. Under "J" and this present proceeding, the refunded debts are now evidenced by refunding securities, refunding bonds and tax participation certificates. The unrefunded debts are still represented by old bonds, and old bonds that are in judgment. As I understand the Act, it is for a composition of the debts of the City. Now, under "J" you are authorized to vote the debt in is refunded form for whatever amount of debt is represented thereby as against the unrefunded bonds that are not represented

by refunding securities. In other words, it is a matter of composition of debts. Let's read the Section "J"; I think we will get further.

Mr. Gibson:

Your Honor, you also have to read in connection therewith, on Page 134, in the paragraph preceding the paragraph indicated as "Final Decree", about two inches up, starting with the word "Provided". We want, of course, to argue out position as soon as we can get his position clarified.

(At this juncture of the proceedings, Section "J" of the Bankruptcy Act above referred to was read by counsel and the Master).

Mr. Gibson:

To put it another way, or to put it a different way, Mr. Adams, do you consider a Thousand Dollar TPC worth, according to the valuation of Mr. Shaw, $60.00, of equal voting power and equal dignity to a Thousand Dollar bond worth $960.00?

Mr. Adams:

Just a minute. Worth $60.00? Where do you get that?

Mr. Gibson:

That's what he said.

Mr. Adams:

The market value of any security has nothing to do at all with its voting power in a composition.

Mr. Gibson:

Well, I am just asking you what your theory is. Let me put it another way.

Mr. Adams:

Let me state it again, and here it is. Our theory is that we are attempting now in a plan of composition to re-adjust the debts of the City. Now, these refunding securities, the refunding bonds and the tax participation certificates, represent certain old indebtedness existing as of January 1, 1937, and under "J" the holders of them are entitled to vote in its new form of evidence.

Mr. Gibson:

We have no argument with that.

Mr. Adams:

And I don't know whether it makes any difference whether it is a TPC or a bond it is evidenced in, it still is balanced off against an old bond and interest.

Mr. Berry:

Let me interpolate this. The West Palm Beach case held they could not vote the security which had been refunded and canceled. Therefore, Section "J" was passed, and they limited it, by the statute, to the written consent of the holders of any securities outstanding, so therefore he is not voting the original security, but he is voting the securities now held by the holders which were issued in lieu thereof. I think that's perfectly clear, under the act.

Mr. Gibson:

We are not saying they don't have a right to vote, but to put my question in another way, is it your theory that the holder of a TPC, which is a secondary obligation and inferior to the obligation of a general obligation bond, is it your theory that the holder of a TPC's vote is of the same dignity, force and effect as the holder of the general obligations bond vote? I think that can be answered "yes" or "no", just whatever your theory is.

Mr. Adams:

Yes, I think it is.

Mr. Warren:

Let me ask a question, Mr. Adams. In stating your position, you said the attempt was to readjust. You don't mean by that you are going to attempt to reconstitute the former debt of the city for enforcement against the City. I think that's barred by Florida law. Do you mean "adjust" or "readjust"?

Mr. Adams:

We are now attempting to compose in bankruptcy the debts of the City.

Mr. Warren:

You don't mean, then, under any circumstances the bonds could be reconstituted for enforcement against the City as they existed in 1937?

Mr. Adams:

No.

Mr. Berry:

If Your Honor please, I think this is clear, that the only debt that is affected by the plan are the outstanding unrefunded bonds and coupons; the refunded bonds and the TPCs will not be changed in any way by this proceeding. Now, the Statute says that in the consents to that the holders of the new securities, which in a sense are not affected by the plan, but if Section J is correct, and the Court has so spoken, they may vote to the extent of the securities they now hold, but I think they must vote to the extent of all the securities they now hold or all that were issued; I don't think there can be any sense to the Act otherwise. Now, the real question here is, if

you do not get the consent of the unrefunded bonds and coupons, and as they are here resisting this, or not present in Court at all, I don't believe that consent can be obtained, then can the consent of the new securities carry over the plan, and if so, to what extent must they be voted. That is the question we are asking Your Honor to decide.

Mr. Gibson:

It is our desire to ascertain the theory on which these consents are to be voted, or the classification of the consents, so voted. We have here an unusual, novel, unorthodox type of refunding plan, presented for the first time in Federal Bankruptcy Courts. The opponents to the plan of composition have no desire and no intention to contend that the holders of all claims, regardless of how evidenced, are not entitled to vote in this plan of composition. It becomes important, however, to determine the classification under which those various claims should be put under the Act. Now, Section "J" was evolved for the purpose of completing, under the jurisdiction of the Bankruptcy Court, a plan of composition that was started as a voluntary plan of composition, and under which voluntary plan a partial completion was achieved. That is the primary and only purpose of Section "J". It amends the Act only to that extent. And Section "J" provides, that the Court may and shall consider the written consents of the holders of any securities outstanding as the result—and I wish to emphasize the word "result"—of any such partial plan of composition. Clearly, under that plan, the holders of tax participation certificates hold those tax participation certificates as the result of the uncompleted plan of composition, and they are entitled to vote those tax participation certificates, but the tax participation certificates are the securities that they vote; nothing else. That is the language of the Act, and very clear. Now,

then, let's depart from that for a second, and refer to t
portion of the Act that provides for the classification
securities. That section says that the holders of all clai
regardless of the manner in which they are evidenc
which are payable without preference out of funds deri
from the same source, shall be of one class. The purp
of that section is to describe and explain the portion
the Act requiring a classification of creditors. Now, i
our contention that this—that 66-2/3s of each class
creditors must vote for the approval of the plan bef
they have complied with the Act. In other words, 66-2/
of the creditors of all the classes have to vote. N
then, what do we find here in this statute? We find, d
nitely, two classes of creditors, and possibly a class
creditors with the color of a third class, but not actua
in a third class; and we find two classes of creditors ho
ing securities issued as the result of the partially co
pleted plan of refunding, and we find one group of cre
tors holding securities that never have been refunded,
those securities have the same characteristics and specifi
tions as one of the classes of securities held by the hold
of refunded obligations. Now, there is no contention
don't think, on anybody's part that the holders of un
funded bonds can't vote. That can be done under
original Act. Section 6 simply modified the original A
to give the holders of exchanged securities the right
vote securities that they received when they were
changed under the conditions provided in the Act.
we have only one class of the exchanged securities
sulting from the partially completed plan of compositi
a general obligation bond that constitutes a debt. No
it will be remembered that the Act uses the word "clain
"holders of securities may vote their claims"; and t
claims, regardless of how evidenced, are classified acco
ing to their characteristics. So we have, we will say, th
two classifications of claims; one claim or type of claim

a general obligation bond, reinforced by a legally enforceable obligation on the part of the City to levy taxes to pay that bond and to levy taxes sufficient in amount to pay that bond and keep it current. That constitutes a debt, a legal debt, and there is no superior security nor claim to that type of claim. That's one class of securities resulting from the refunding. Now, we have the objectors' securities which come in that same class. The objectors' securities have all of the same characteristics. The objectors' securities are of the same dignity, they have the same rights, they have the same legal prerogatives, and there is no preference to the right to the levy of taxes for their support between those securities of that class held as a result of the partially completed plan of refunding and those securities held that have never been refunded. They are all on the same equal basis. So, therefore, that constitutes one class of creditors, the general obligation bonds received by the holders thereof as the result of the partial exchange, the bonds held by the unrefunded objecting creditors, and the coupons attached to those bonds held by such creditors who have not exchanged. They, in the aggregate, constitute one class of claims, and there must be 66-2/3 of that class, which is all right and intended and fits right into the frame work of the Act. Each of those securities bears a stated and specified rate of interest that continues until that debt is liquidated, and each of those securities is supported by the inexhaustable taxing power of the municipal corporation for the payment of both the principal and the interest accruing thereon. Now, then, under this particular plan of composition we have another type of a claim. I can't call it a security, or I might say I can't reconcile myself into calling it a security because it is a claim of the lowest type and order. It does not even approach the dignity of a debt. It cannot be sued upon; its payment cannot be enforced in the Courts of the land,

either State or Federal; it bears no interest whatever pending the time it is proposed that it be liquidated. It is not even the equivalent of common stock in a corporation. It is not supported by the taxing power in an enforceable manner. It is not equal in dignity to payment out of the same source, or out of funds derived from the same source as are the securities of the first class mentioned. This security simply gets the over-plus of the proceeds of a tax levy when and after the securities of the first type mentioned have been fully paid and evidenced. A relative sense of their value can be gathered from the testimony of Mr. Shaw in this case, where he stated that their market value as of about the time of filing the Petition or about the time of the plan of composition was six cents on the Dollar. It is our contention clearly, plainly, under the express terms of the Act, under the unchallenged characteristics of the different securities, that those tax participation certificates are entirely a different, separate class, entitled to vote, yes, but there is nothing in Section "J" that in any way modifies or changes the classifications appearing in the body of the Act. It simply gives them a right to vote, after the exchange, the securities they received as a result of the exchange. That was the purpose of the Act. The Act was evolved to correct a condition arising out of the City of West Palm Beach, where they had partially exchanged, and undertook to vote exchanged securities, and there the Court said they could not vote exchanged securities because manifestly there was no unity of interest between those who had accepted the voluntary exchange. And of course, it is to be assumed that the man who took a lesser amount for his debt would like to put everybody else in the same position. That is what brought about Section "J". Section "J" simply allowed him to vote his securities; it didn't change the classification, and it specifically says that he votes the securities he received as

a result—nothing else—of the exchange. It in no way changed or modified the original classification. Now, then, it would certainly be inequitable to permit, years later, the holders of securities purchased in the open market, at 6 to 8 cents on the Dollar, we will say, giving them an advantage of 2 cents, to vote on an equal parity with securities having a value of $960.00 per Thousand, or 96 cents on the Dollar, without regards to the Act itself, just forgetting the frame work of the Act and considering for a second the Bankruptcy Court is a Court of Equity, and a complaint against the voting of some TPCs on equal parity and equal dignity with bondholders would be a well-founded complaint. I have a Thousand Dollar piece of paper, and this man has a $60.00 piece of paper, and he has an equal vote with me? If there was no Act, if there was no classification, that would still be a well-founded complaint directed to the equitable conscience of the Court. But we don't even depend on it; we don't depend on it for a minute. We look right to the frame work of the Act, and that can't be changed. The City of Coral Gables can't whip this Act around to meet the conditions arising by virtue of their fulfillment of an unorthodox plan of composition.

Mr. Warren:

May I read into the record from the tax participation certificate, and I am reading from Ordinance 269, where the form of the Certificate is set forth. They surrendered their bonds "and accepted this certificate in complete satisfaction and discharge of the indebtedness so surrendered"" and this Certificate "shall not constitute, either directly or indirectly, or be construed to be, an indebtedness of The City of Coral Gables", and the certificate "shall have no definite maturity date"; and this certificate, "Notwithstanding the fact that the total of the payments made hereon may not equal the amount of the indebted-

ness exchanged herefor, this Certificate shall expire upon disbursement of all monies in the Tax Participation Certificate Fund after completion of the sale of tax liens representing taxes levied for the fiscal year 1976-77 and thereafter the City shall have no further duties with respect hereto".

Mr. Gibson:

Mr. Warren's reading of that certificate brings a further characteristic brings a further characteristic of the TPCs that I think it is well to know. Those TPCs expire on a given date, whether they are paid or whether they are not paid, whereas the bonds in the first classification never expire, and continue to draw interest so long as they are unpaid, subject only to the general Statue of Limitations of the State. So it is our contention, Your Honor, that in this case the City under its plan finds itself required to obtain 66-2/3% of the first class of creditors, plus 66-2/3% of the second class of creditors, and their failure to obtain 66-2/3% of either class of creditors subjects their petition to dismissal for lack of compliance with the Act in this regard.

Mr. Warren:

In other words, our position is that the tax participation certificates are no more, if as much, as common stock in a corporation, and the position of the bonds, refunded and unrefunded, including interest, is in the position of a first mortgage lien in a private corporation, and that the Courts have uniformly held that the holders of common stock could not coerce the holders of bonds to scale their debts, although the majority of the common stock, or two-thirds of the common stock might be required and two-thirds of the bonds might be required to effect a private bankruptcy claim.

Mr. Gibson:

The same set-up in a corporate composition under Section 77-B would require the voting of 66-2/3s of each class of creditors, undisputedly. I think that's what they have attempted to do here, use the private corporation type of a composition in a municipal corporation, and have used it as their inspiration, you might say, for this. I know that to be a fact, or at least it is logical to assume that, because Mr. Exselsen, the man who evolved this plan, his past history is entirely tied up with the refunding and reorganization of private corporations. The philosophy and the requirements and the adherence to the same rules of proceedings under the municipal bankruptcy Act as proceedings under Section 77-B apply; that has definitely been stated by the Supreme Court of the United States in a number of situations, particularly the recent case of Avon Park, where 97% of the authorities cited were 77-B cases.

Mr. Lea:

Your Honor, I would just like to add this one other thought. The way it appears to me, that back in 1937, if the Court can project itself back that far, at the time of the exchanges, each old bond was changed into a refunding bond and a tax participation certificate. That was a unit. Regardless of how much the TPC was, that was a unit. Suppose the TPC had been the amount that the City forgave, just everyone forgave that amount. It seems to me, then, that if we were to group the TPCs and the new bonds in just one group, that the City could merely get the consents of those who had nothing and force the others who had obligations of the City to forgive that obligation, so I think it is clearly logical you have got to get two-thirds of the new bonds plus the old bonds, all being in the same class—two-thirds of that amount—and at least two-thirds of the TPCs. It is the

only possible way you could look at it. You certainly couldn't make a man whose security is payable from a different source vote another person who holds a security of a higher dignity than the other, to take a plan of composition such as this.

Mr. Gibson:

Your Honor, I think we could address arguments to this Court at great length if we would dwell simply on the equities of the situation, the logic of the situation, or the fairness of the situation, and even though, as Mr. Berry has stated, this is the first instance where this situation has appeared before a Court and we have no precedent to go back to, we don't need any precedent, we don't need any application of the equitable conscience of the Court, and we don't need any logic; all we need is the abliity to read the Act, the plain, clear words of the Act, and the Act specifically provides for the classification of the securities and for the voting of the securities, and how to determine the different classifications of the securities, and it is simply under the wording of the Act that we take our contention.

Mr. Clarke:

I would like to observe that Subsection "J" provides that the holder of the new obligations has a right to vote, but does not attempt to define what class he shall vote in or how his vote shall be counted, and that the determination of that has to go back to the other provisions than Section "J" of the Bankruptcy Act.

The Master:

Mr. Berry, do you have anything further?

Mr. Berry:

I don't know that I can add anything to it, if the Court please. I think the matter is fully presented.

The Master:
Well, we will hear from the other side.

Mr. Adams:
If Your Honor please, I think the fallacy of the argument of opposing counsel is first in their discussion of the types of evidences of indebtedness held by those parties who have already participated in the voluntary plan of refunding and taken those securities. We contend that there is one class of creditors involved in this proceeding; that class is determined by the source of payment of those bonds as required in the proviso of the second paragraph of Sub-paragraph B of 83 of the Municipal Bankruptcy Act, where it says: "The holders of all claims regardless of the manner in which they are evidenced which are payable without preference out of funds derived from the same source or sources shall be of one class". I haven't been able to locate the authorities, but there are some that affirm it in the simple form, that the question of determining the class of securities is the source from which it is to be paid. I think it was in the Vallette case. Now, Section "J" has been construed by the Supreme Court in the Sanford case, and we think that that interpretation there is very important to this particular question; that's the American National Bank vs. The City of Sanford, 112 Fed. 2d, 435.

Mr. Warren:
You mean the Circuit Court of Appeals, don't you?

Mr. Adams:
Yes. This is the Circuit Court of Appeals decision, and the Supreme Court denied the petition for certiorari.

Mr. Gibson:
Before you get started, Mr. Adams, in that case you did not have two classes of securities, did you?

Mr. Adams:

Just a minute. I have sat here and listened to all you harangue for a long time. —In that case, the Circuit Court of Appeals, in interpreting Section "J" of this Act, found and held: "We therefore reject as wholly without merit appellant's first and second contentions that the amendment was not intended to, and does not in terms, authorize the filing and, if the conditions of the Act are met, the approval of the voluntary plan as a plan of composition in bankruptcy". Now, we contend that that is the proper interpretation of Section "J" of the Act, and that it authorizes the complete effectuation of the voluntary plan by a proceeding in the Bankruptcy Court in the nature of a composition proceeding, and that that is the plan that is now before the Court. There is not before the Court now a question of considering the nature of the refunding securities as to whether they are payable from the same source or not, but the question before the Court is as to whether the debts partially refunded by the voluntary plan were payable from the same sources, and they were. Now, in the Pacific coast circuit, the Ninth Circuit, in the West Coast Life Insurance Company vs. The Merced Irrigation District, in 114 Fed. 2d 654, the question of the interpretation of Section "J" came up again, and that Court held on this particular question as follows: "It is likewise true that the section does not specifically state that the holders of the refunding bonds shall be deemed creditors to the full face amount of the old securities. However, the section does provide that the partial completion of a plan 'shall not be construed as limiting or prohibiting the effect of this title'. Words could not be plainer. Congress intended by this enactment to provide for partial completion of a plan of composition, even in a situation where refunding bonds have already been issued, shall not be construed as changing the status of the parties".—Now, our contention is, the

fact that some of the creditors of the City now hold refunding securities does not change the status of those parties as creditors of the City as of January 1, 1937, the effective date of the plan that is submitted for composition in bankruptcy; that the status of those creditors is just the same as it was then; and that therefore there is no point to the argument pointing out the alleged deficiencies in the tax participation certificates and the hybrid nature of those securities. I want to call to Your Honor's attention how well the old portion of the Act that I quoted just above establishing the basis of classifying claims, fits this interpretation of Section "J", where it says that the holders of the old claims—of all claims, regardless of the manner in which they are evidenced. Now, Section "J" comes along and says that although you have partially completed a plan, and the creditors hold a new evidence of the old debt, that they may still vote; and that's the effect of it. Now, as to Mr. Lea's illustration, they are referring to a plan wherein a portion of the debt might be forgiven; suppose you had an old security in the amount of $1,000. and new refunding securities were issued in the amount of $500., and the rest of it forgiven. The holder of the new security in the amount of $500. would vote the amount that that security represented in the old obligation, in a proceeding like this. Now, this will illustrate the position, I think. There are outstanding refunding bonds, and the City owns certain refunding bonds, so of course, they must be deducted; there are outstanding tax participation certificates, and the City owns some, and they must be deducted.

Mr. Berry:

May I interrupt to ask if they must be deducted from the total outstanding, or the total voting?

Mr. Adams:

The total voting.

Mr. Berry:

But not from the total outstanding.

Mr. Adams:

No, not from the total outstanding. Now, there are in the present statuses of the evidences of debt certain judgments which represent so much old debt, or in terms of refunding bonds, so many refunding bonds; and the same as to unrefunded bonds. There are now so many unrefunded bonds which represent the refunding bond value of so much. Now, that same applies as to the tax participation certificates, and I don't think it makes any difference whether you resolve the present evidence of indebtedness, the refunding security, back into the old debt form, or resolve the old debt form into the present refunding securities form for making your comparison; but, as said in these cases here, and as said in the Merced case, the voluntary execution of the plan does not change the status of the parties; the holder of a refunding security has the same rights in this composition as the holder of an old bond in the amount of the old debt that his refunding securities represent.

Mr. Gibson:

Your Honor, I just have two quick observations—

The Master:

Wait a minute.

Mr. Adams:

(Continuing.) Now, according to our theory and the figures as of the time of filing the petition, there were consents filed by the holders of refunding bonds and tax participation certificates which, in terms of the original debt, or the old debt which they represented, were 51% of all of the debt as of January 1, 1937, and that there

are now on file consents to the completion of the plan in the amount of 66-2/3% of the total indebtedness as of that date. The fear that Mr. Gibson mentioned of these allegedly worthless tax participation certificates voting this plan through over the other debts is rather far-fetched. There are not enough tax participation certificates outstanding to vote the plan through as a tax participation certificate proposition alone. It might be true, as a practical proposition, that someone might go out into the market today and attempt to purchase enough tax participation certificates to defeat this plan. That, however, would come within the principles announced in the Avon Park case in the inverse of that situation. The tax participation certificates are registerable, and the transfers are not complete until registered on the books of the City. They are registered there now, and I don't think that the scarecrow of oppression to the unrefunded bonds is a practical one. As a matter of fact, what we have is pretty close to the same percentage in the refunding bonds and tax participation certificates.

Mr. Berry:
Well, may I ask a question, Mr. Adams?

Mr. Adams:
Yes, sir.

Mr. Berry:
I just want to try to get your theory. I believe when you made the exchange of new bonds and TPCs for old bonds, it was approximately in the proportion of 4/11ths and 7/11ths.

Mr. Adams:
Approximately, in round numbers.

Mr. Berry:

Now, is it your theory that when you get 4/11ths of a new bond and 7/11ths of tax participation certificate, that that represents an old bond?

Mr. Adams:

Yes, sir.

Mr. Berry:

And that you must have the two elements in each voting to constitute a vote? That is, you cannot vote tax participation certificates alone, nor can you vote refunding bonds alone, but you must vote the combination of the two as representing the old bond.

Mr. Adams:

If they are individually owned, an old bond could be owned by two people, 50-50, and be—

Mr. Berry:

I'm not getting to that. The tax participation certificates might be in one single ownership, now, and all the bonds in another.

Mr. Adams:

That's true.

Mr. Berry:

But if you get the two to come in and vote, they can vote, that's your contention, and neither one alone could carry the plan?

Mr. Adams:

No, neither one could carry it alone, I don't believe.

Mr. Berry:

It takes a combination of the two, irrespective of who owns them, and it must be a combination of the two. I'm trying to get that clear, if that's your contention.

Mr. Adams:

Let me state this. Those refunding securities represent old debt, and the status of that old debt in this plan and for purposes of classification has not been changed at all, and they are entitled to be voted. I don't think as a practical proposition that it is possible to tie up the particular identified refunding tax participation certificate and refunding bond with the particular old debt, but the totals of the amounts of the two will show the proper percentage.

Mr. Warren:

May I ask this, Mr. Adams. You mean that if there were sufficient tax participation certificates outstanding representing 66-2/3% of the original debt, that they would be considered as sufficient to put this plan over?

Mr. Adams:

Yes, I think so.

Mr. Berry:

Let me put it this way, and ask this one more question. If the entire plan had gone through, and all bonds had been refunded, there would now be outstanding or would have been at that time, because I am not taking in the cancellations, $4,200,000. of refunding bonds, approximately?

Mr. Adams:

Yes, sir.

Mr. Berry:

And approximately $7,000,000. of tax participation certificates. Now, your contention is that if you get two-thirds of $4,200,000. and two-thirds of $7,000,000. and do not include in either one the securities held by the City, that that is sufficient to put over the plan, irrespective of whether the old bonds do not vote, or even vote against you?

Mr. Adams:

Yes, sir.

Mr. Berry:

And it will take that much, and will take two-thirds of each of those?

Mr. Adams:

Yes, I think so.

Mr. Gibson:

Well, that's all we are contending.

Mr. Berry:

I don't think we are far apart, if the Court please.

Mr. Gibson:

I want to make this statement. Mr. Adams gave the example of a $1,000 bond refunded for a $500. bond, and the $500. bond would vote as a $1,000. Now, we have a number of men here who have all been involved in a great number of bankruptcy cases, and I think I am safe in making this statement, and if I am wrong I would like to have somebody dispute me. Never in the history of bankruptcy litigation has anybody ever voted anything except exactly what they got as the result of what they got in the refunding; in no case at all; on the contrary,

in a great many cases where there have been a scaling down, and there was a voting, they voted simply what they got in the exchange in the refunding plan.

Mr. Lea:

In the very case they cited they did that. In the Sanford case and every one I know anything about. Now, the Act says this, that the securities received as the result of the exchange; it don't say anything else, and you can't read into such plain language as that something else.

The Master:

Are you all through, gentlemen?

Mr. Warren:

Let me say this, if the Court please. Mr. Adams referred to someone buying up tax participation certificates to wreck the plan. Someone who was a taxpayer in the City could buy up sufficient of these tax participation certificates to be able to put over the plan.

Mr. Lea:

Of the City could solicit them itself.

Mr. Berry:

Isn't that another theory that isn't involved here?

The Master:

I am leaving that to you gentlemen, right now. Now, you have all talked about voting. When does this voting take place.

Mr. Berry:

They have done it. It is here. We want to classify the vote.

The Master:

That's the only voting I know anything about. Do you gentlemen for the defense contend that—you do contend, as I understand, that there must be 66-2/3% of the participation certificates and of the bonds voting. Now, do you contend that there is a shortage on either one of those two?

Mr. Gibson:

Yes, sir.

Mr. Berry:

Not yet; we don't know; but we expect to develop that.

The Master:

That's what you expect to find out?

Mr. Berry:

Yes, sir.

The Master:

I want to study this, gentlemen; I will rule after lunch.

(Recess taken from 12:10 to 2:00 P. M., at which time the following proceedings were had:)

The Master:

As I understand, Mr. Berry, you haven't presented any motion. You have just asked me to rule on my interpretation as to whether the participation certificates and the refunded bonds call for separate classification, and whether the voting power of the bondholder is thereby affected. Is that it?

Mr. Berry:

That's correct.

The Master:

Well, the fact has been brought out that this is a new question. I wish somebody else had been called on to rule on it first, but that can't be, but my ruling is that the original holder of bonds is not affected by the change of the form of his securities resulting from the refunding, and that a bondholder is entitled to vote in accordance with his original holdings.

Mr. Berry:

Then may I ask the further ruling from Your Honor, whether or not the bondholder who effected the exchange is the one whom you will now recognize and the individual or person entitled to vote, or will it be the present holder of those refunded securities if the original bondholder has sold them, and at the time of the solicitation of the consent had nothing to do with them.

The Master:

Well, if the bondholder had actually sold his holdings, it seems to me that the new holder is the man who is to be voting.

Mr. Berry:

Then as I understand Your Honor's ruling, at the time of the filing of those proofs of claim and consents, the person executing that must be the actual owner of the securities represented thereby, or holder?

The Master:

That seems to me to be necessarily so.

Mr. Gibson:

And there is no difference in classification whatever of TPCs and bonds?

The Master:
That's my ruling.

1022 G. N. SHAW was recalled as a witness, and being still under oath, testified as follows:

Cross Examination (Continued).

By Mr. Berry:

Q. Mr. Shaw, I am not taking up the proofs of claim and consent, and to shorten the matter I will state that each of these I am taking up is on a printed form which has been introduced in the record in blank as part of Exhibit 21, and the ones I am mentioning now are marked "Filed July 24, 1940", and until I change the date, without reiterating that, that will again be true. That first one is the proof of claim of John D. Taylor, who is listed as holding TPCs in the amount of $3,333.88, and I will ask you if you have any evidence whatever, other than this paper, that this man was the holder of those TPCs at the time he executed this proof on July 15, 1940?

A. Yes; we have the City's registration of the ownership of TPCs.

The Master:
I think I should add to my ruling, possibly, Mr. Berry, that I shall presume that the rightful owner has filed the claim until the contrary is shown; so whenever the claims are on the claim form you have just exhibited, I so hold.

Mr. Berry:
Now, if Your Honor please, it is our position that it is the duty of the City to furnish these consents. They have been furnished under an order of His Honor, Judge

Holland, that does not require, as we think the Act requires, the presentation or filing of the security on which the claim is based. We have no knowledge of these people; we have not corresponded with them, and we think it is the duty of the City at this time to present some evidence beyond the unsupported statement of the claimant that he is the owner of these securities.

Mr. Gibson:

I might say this, Your Honor; it is the custom and has been the custom in the majority of these cases, to have these proofs of claims verified by a certificate of exhibition to a bank or trust company. Now, when this proceeding was first started out, they required the deposit of the securities with the Special Master. Of course, that was a cumbersome and expensive and burdensome matter, because lots of times the securities were hypothecated, so then that was modified to a point where they have a certificate on the proofs of claim of exhibition to a bank. Now, that practice was started by Judge Akerman. Why it has been departed from in this case and one or two other cases I know of, I don't know, except this, that it simply went along unchallenged, and that was that, but I think I am safe in making the statement that by far the greatest majority of all bankruptcy cases have required a certificate of exhibition from a bank that is stamped on or attached to the proof of claim.

The Master:

I have contemplated that before the proceedings were over it will be necessary to produce the securities themselves, or some proof by which they can be verified, but I don't think we have reached that point yet.

Mr. Gibson:

That's perfectly all right, as long as that has got to be done before we get through.

Mr. Berry:

Well, it is our idea, if the Court please, that we have reached that point; that we are down now testing the production by the City of the two-thirds of consents necessary under the Act, and we think that there ought to be some further evidence than there has been submitted of that fact, and that is what I am seeking here this afternoon, and if that is again deferred to some future time, I don't know what time that would be, but it should be, of course, before Your Honor reports; there ought to be sufficient evidence that these claimants did own, at the time they filed this claim, the securities. I am inclined to the belief that a later sale—without conceding that now—would not affect the matter, because they would be transferred subject to the action of the prior holder. The subsequent holder might withdraw if he wanted to, on the proper showing; as to that, I don't know; but in one instance at least, in sending the questionnaires, we discovered that the party who filed the claim was not the holder of the securities at the time; at least, he so testified in the Answer that was enjoined by Judge Holland. And it is to that point where I want some ruling whereby we can verify the fact that these proofs of claim are based on the actual security in the custody or control of the claimant at the time of the execution of the proof of claim.

Mr. Gibson:

Just to corroborate Mr. Berry's statement in that regard, and rather coincidental, that particular item was referred to me, and the individual owner didn't even know that this brokerage house had filed proofs of claim and consents; he didn't know anything about it. I might state further that that particular item does not desire to consent.

Mr. Berry:

If Your Honor please, we have men that signed for corporations, without knowing their authority; we have executors, we have trustees, and others, none of whose authority is shown or do we know.

The Master:

It seems to me, Gentlemen, that the expeditious way to handle this matter would be, whenever the proper time arrives, to require the production of the securities or the proofs, you gentlemen then can examine them, and if you have any questions to any of them, bring that up, rather than to take up each of these cases separately now.

Mr. Berry:

Those motions have been made, and for the time have been denied heretofore. We think that we are down to that point, as I told Your Honor, and we now move that the City be required to furnish in some reasonable way, evidence that the parties who executed these proofs of claim and consents were the owners of the securities described therein at the time they executed these. That may be done by the method of presenting them to a known bank or trust company and having them certify the production, or presenting them to an auditor, or filing them here in Court temporarily, any way Your Honor may deem most expeditious.

The Master:

What have you gentlemen to say to that?

Mr. Adams:

Under the present status, it looks to us like it would be a matter that would have to go back to the Court, the original order directing the filing of proofs of claim with-

out the production of the original documents. We think that Your Honor's ruling is correct, that there is a presumption of validity of this claim from the sworn statement, and that nothing to the contrary being shown, it is the burden of those opposing it to show anything to the contrary. Now, we run there into this question, of the right of this owner to appear and show, and have knowledge of the contest of his ownership of this claim. We have their sworn statements of ownership. We don't know that they are all correct, but we take their affidavit for it, as Your Honor just announced just now. Now, they are on file in the case. Particular objections to these claims were raised, an issue that the City might appropriately assist the assenting creditor in meeting, but as an issue as to that particular creditor and his rights in the matter, and if they have any evidence that the consents here filed are filed by parties who are not the owners of those securities at that time, we think it is their obligation and their duty in the case to object to that on that ground, and prove they are not the owners, or put the issue to the party who is filing that claim. In this method they can't shift to the City the whole burden of going out and bringing in all these bonds. There might be appropriately an issue between this individual claimant, and then as adversary parties in this litigation as to whether they really own that claim or not, and there is a procedure whereby they can take that up, and the Court has so ruled that there is a method whereby they can take that up, and the burden is not upon us, as Your Honor ruled, to verify and further prove all these claims when there is nothing before you to show you there is any just basis for doubting them.

Mr. Berry:

If Your Honor please, this again raises part of the challenge of Sub-section "J". I am not trying to hold that

unconstitutional, because it has been ruled to the contrary. But, if there had been no partial refunding, certainly each claimant would then, under the Act, have had to present his security upon which the claim was based, and that would have been required by the City before it was paid, because it would have been to their interest to do that. Now we have the security which has been refunded, and the actual security which the party executing these consents is basing it on is not to be affected in any way by this plan. He is to be entitled to retain that in its present form, unchanged, and to exercise all the rights of ownership in the meantime; therefore, it is to the interest of the City to file as many consents without further evidence as they can. There is nothing we can say except try to examine these, run these men down with the limited facilities we have, and ask them if this is true. Now, my idea of it is that the statute makes it necessary that they file a consent, and that must be a legal consent, and there must be sufficient evidence back of that to prove it such in the event it is challenged. Now, we have challenged these consents in every way we can by motions to strike, and we are now challenging them on the ground they are nothing but a sworn statement of an unknown man that he is the owner of a certain security, and in some instances they have authority. Now, I think the rule that the burden of proof must shift from the proponent in this case to us who challenge it is an unknown thing in the law. And as far as I know, in all the 77-B cases, to which this is analogous, the party furnishing the consent has to furnish sufficient evidence to satisfy the Court beyond a reasonable doubt that that is true, and we respectfully submit that the mere filing of a paper in the Court, without any right of cross examination and without any right to examine his securities, is not a sufficient compliance with that. Now, even His Honor, Judge Holland, ruled this: "that

the bonds and/or coupons upon which proofs of claim are filed need not be presented with said proofs of claim provided, however, that such bonds and/or coupons must be produced by the claimant there of if so ordered and the Court shall deem it necessary and advisable to require the production of same; and in case the plan of composition be confirmed, said bonds and/or coupons must be produced and deposited in accordance with the terms of the plan of composition or the further order of this Court, in order to entitle the claimant thereof to participation in the plan of composition". Now, that is what he ruled on it. Now, we think, if Your Honor please, that there is no need of going further with this if they haven't got the requisite consents. The time for filing has expired, and it has not been reopened or renewed, and therefore we are down to testing that, and we therefore move that Your Honor rule, or if Your Honor thinks it beyond your province to do that, that a Special Report be made to Judge Holland at this time on which we can ask a ruling from the Court.

The Master:

Judge Holland's ruling is exactly the point that has been in my mind since we started into this question. In the first place, it is perfectly clear that he contemplates that these securities must be filed before the proceeding is ended, but in the second place, his order seems to contemplate that he shall issue the order for the filing, and I just can't agree with counsel that these claims as filed are not sufficient prima facie evidence on which to proceed, but whenever those securities are brought in, as Judge Holland contemplates they shall be, then you gentlemen will have the opportunity to examine them and to attack such of them as you see fit, and I so rule.

Mr. Gibson:

At what stage of the proceedings does Your Honor think it would be proper to have these securities submitted to the Court.

The Master:

Well, as Mr. Berry suggested, you can apply to the Court now if you see fit.

Mr. Berry:

Well, we therefore except to Your Honor's ruling, and ask a special report on which we may apply to the Court, if Your Honor will grant that.

The Master:

It is granted.

Mr. Gibson:

And we ask for an adjournment until such time as it is settled.

Mr. Berry:

If the Court please, a further motion. In examining the proofs, there are a great number of them that are filed subsequent to August 26, 1940, which was the last date permitted for filing under Judge Holland's decree. I believe he did, under a decree which we will not argue before Your Honor, permit the $18,000. of those proofs of claims and consents to be filed, but I have here a list if the Court please; it is a page and a half of claims that were filed subsequent to August 26, 1940, and so far as I am aware have never had any permission from Judge Holland to be filed, and we ask that they be stricken.

Mr. Gibson:

There is one further observation in that regard. The Act definitely limits the time within which such proofs

of claim be filed, and there is no discretion beyond that point. In other words, the Court, as it done in this instance, may order they be filed within 60 days. That 60 days happened to be prior to the time the Court says they must be filed. Now, it is within the discretion of the Court as to whether they shall be filed within the 60 days. There is no question about the discretion of the Court. We have been through that several times, and while I haven't been through it with Judge Holland, Mr. Lea and myself and some of the others have been through it with Judge Akerman, and in which the attitude of the Court is that there is no discretion of the Court in the matter if they are filed after the date allowed or as provided by the Act.

Mr. Lea:

I would like to read that to Your Honor; it is on Page 132 of the book you have before you. It says "the Judge shall prescribe the form of the notice, which shall specify the manner in which claims and interests of creditors shall be filed or evidence, on or before the date fixed for the hearing". The date fixed for the hearing in this case was September 19th, by order of Judge Holland. It was later continued until October 19th, as I recall, and this is now that hearing. So that the Act specifically requires that all claims be filed on or before that date. I know of no adjudicated case in municipal bankruptcy that they have allowed any claims beyond that time. I know of some, of my own knowledge, where they have disallowed and refused us to object to the plan if the claim was filed after the time, on the ground that that's the plain statutory limitation.

Mr. Gibson:

Filing the proof of claim does not in any way affect the creditor's assets. In other words, because he didn't file a

proof of claim don't mean he won't get refunding bonds for the bonds he has in his hand, but the proof of claim is the thing that validates his consent or objection, and that is the thing that is limited.

The Master:

I had in mind that Judge Holland had made some order in October; I don't remember exactly what it was, but it seems to me to have a bearing on this question of the time to present claims; and I also had it in mind that that order took it out of my hands; took the question out of my hands, as to when the claims should be presented.

Mr. Lea:

I believe you may be mistaken there, Senator. I believe the order in October merely extended the time for hearing until October 19th, and extended the time for objections to ten days prior to that time, but there was no adjudication or order so far as I recall of extending the time for filing proofs of claim.

The Master:

Well, my recollection on the subject is rather hazy.

Mr. Lea:

If I'm wrong, I will stand corrected by Mr. Adams.

Mr. Adams:

Your Honor, we don't agree at all with the interpretation of the Act as stated by counsel. We argued this question to some extent in the consideration of the general motions which they made. The Act does contemplate the use of proofs of claim, and in Section 83-D, on Page 133, where it takes up the question of "Acceptance of the Plan by Creditors", it says, "The plan of composi-

tion shall not be confirmed until it has been accepted in writing by or on behalf of creditors holding at least two-thirds of the aggregate amount of claims of all classes affected by such plan, and which have been admitted by the petitioner or allowed by the Judge, but excluding claims owned, held or controlled by the petitioner." Now, there is not a word in that which requires that a proof of claim be filed as a condition precedent to the right to file an acceptance to the plan.

The Master:

It has been held, as I recall, that the filing of an acceptance is an equivalent to the proof of claim.

Mr. Adams:

Well, it wasn't held exactly that way. It was held in this West Coast Life Insurance Company vs. Merced case that the failure to file a proof of claim—here's the exact wording: "In these circumstances it is immaterial, if true, that no claim was filed". Now, the circumstances were these: "Suffice it to say that the petition filed in these proceedings alleged ownership of the bonds by R. F. C. and that R. F. C. as such owner, consented to the plan of composition. The Court found these allegations to be true, and the findings are supported by the evidence. In these circumstances, it is immaterial, if true, that no claim was filed". This authorization for the consent contemplates proofs of claim, because the petitioner might not list all the claims, and certainly the creditors are entitled to an opportunity under the order of the Court to prove a claim; but, if it is listed by the petitioner why it is a claim there, and when the time comes to file consents, they may be filed. Now, there are two or three other spots in the Act, in the paragraph dealing with the hearing. The Act says: "At any time not less than ten days prior to the time fixed for the hearing any creditor

of the petitioner affected by the plan may file an answer to the petition controverting any of the material allegations therein and setting up any objection he may have to the plan of composition. The Judge may continue the hearing from time to time if the percentage of creditors required herein for the confirmation of the plan shall not have accepted the plan in writing, or if for any reason satisfactory to the Judge the hearing is not completed on the date fixed therefor". In the next paragraph there is a contemplation of securing acceptances to the plan, still in the paragraph dealing with the hearing: "At the hearing, or a continuance thereof, the Judge may refer any matters to a special master for consideration, the taking of testimony, and a report upon special issues, and may allow reasonable compensation for the services performed by such special master, and the actual and necessary expenses incurred in connection with the proceeding, including compensation for services rendered and expenses incurred in obtaining the deposit of securities and the preparation of the plan, whether such work may have been done by the petitioner or by committees or other representatives of creditors, and may allow reasonable compensation for the attorneys or agents of any of the foregoing, and may apportion the amount so determined among the parties to the proceedings as may be just". Now, in the paragraph dealing with the confirmation of the plan, modifications and appeal, which is "e", sub No. 3, one duty of the Judge is to determine whether the plan "has been accepted and approved as required by the provisions of Subdivision "d" of this section". So that in none of those portions of the Act dealing with the hearing and the acceptance and approval of the plan is there any mention at all of the necessity of a proof of claim to entitle the creditor to file his consent, unless, of course, it is a creditor whose obligation was not listed in the schedules of the Petitioner.

Mr. Gibson:

Your Honor, we are running into a practical proposition there. Assuming Mr. Adams is correct for the purpose of argument, and that he can file his consents at any time, his consent isn't any good unless he proves he has got the bond, and the City recognized that when they sent out what they called a proof of claim and consent. Now, the Act limits the time for filing proofs of claim. Assuming the Act doesn't limit the time for filing consents, then he has got to prove that his consents are well-founded, and it looks like we are getting into a practical matter. The Act provides and limits the time within which consents shall be filed. I don't have anything to do with it, and the Court don't have anything to do with it and Mr. Adams don't have anything to do with it. Now, if they come in with a bunch of proofs of claims after the time has expired, then they just can't be considered. That's something else we don't have any Circuit Court of Appeals authority for except to say this, we have been through this argument before Judge Akerman several times, and that has been his uniform ruling. And I might say, we were on the losing side in these cases.

Mr. Lea:

They can't just consent without making a prima facie showing of ownership; a city can't come in and say they can consent, and they don't have to prove they own them and we have to prove they don't own them, and that they have a proof of claim.

Mr. Haycock:

Your Honor, looking at it from a practical viewpoint, as Mr. Gibson states, Mr. Gibson is right as to a portion of the order in regard to the production of bonds; and it said, however, bonds and/or coupons must be produced if it is so ordered and the Court shall deem it neces-

sary and advisable to require the production of the same. Now, it seems to me that's a matter for the Court to entirely determine when it is presented to him.

The Master:
I have ruled on that point.

Mr. Haycock:
And, in case the plan of composition be confirmed, said bonds and/or coupons must be produced and deposited, and so forth, on the further order of this Court, in order to entitle the claimant thereafter to participation in the plan of composition. Now, as to the necessity or advisability in this particular case, it is the partial completion of a refunding in progress, and it may never be necessary, unless their ownership was challenged, to produce these bonds, from a practical viewpoint. Now, if the plan is modified, if it is confirmed on different terms from what it now stands on, of course it would be necessary for these bonds to be sent in to be changed or altered or stamped, or some certificate, as ordered by the Court, but it may never be necessary for the bonds to be brought in if the plan is confirmed in its present form, except to exchange the outstanding bonds, so I think Your Honor's ruling covers that entirely, and I think that leaves the matter of the consents up to the final hearing.

The Master:
That question you have just been discussing is covered by my ruling that the matter should be presented to the Judge. Now, Mr. Berry, what was your last motion?

Mr. Berry:
That Your Honor make a special report—oh—the last motion I made was that the Proofs of Claim and Consents filed subsequent to the Order of the Judge be stricken at this time, and not considered.

The Master:

Subsequent to the order of the Judge of what date?

Mr. Berry:

He fixes August 26, 1940, as the last date on which they may be filed. He allowed four claims, I believe, totaling $18,000. to be filed at a later date, as of July 24th, and they so show, but other than that there is no order permitting this list of claims which I have here to be filed, and they were filed in December, and we ask they be stricken so far as this proceeding is concerned. And I superimpose on that the further situation that the claims now being attacked, they being filed out of time, were not only subsequent to the Court's order, but subsequent to the period in which the Act itself allows for filing claims perhaps by six or eight weeks. May I say in arguing that, that Mr. Adams has read from the Ninth Circuit Court, which cites the case in which the R. F. C. was involved. I think they put their decision there on the very special ground, and the only point of interest was, whether or not the original bonds had been canceled, and they held they had not been canceled and were still alive and could still be used as a claim, and they went further and said, inasmuch as they were named as holder of these bonds in the petition and had filed an answer, that any further proof of claim or formal proof was unnecessary, and it was a sufficient filing; but in this case when the petition was filed they didn't know who they were except perhaps the 51% they had at that time, and these others have come in since then, and there is no way these people could get in Court except by intervening in accordance with the orders of the Court, and not having complied with the order, we claim they are not in Court and should be disregarded.

The Master:

Mr. Berry's motion is denied, without prejudice, with the suggestion that in preparing a report to the Court this matter be also included.

Mr. Berry:

That will be entirely agreeable; and if we should, we ask an exception, and pray an appeal to the Court, and ask the stenographer to note that in both instances.

The Master:

In connection with that, I might state this, that my reason for this ruling is—that is to say, sufficient reason, that since Judge Holland has himself permitted certain claims to be filed as late as December of last year, it seems to me to imply that the Judge himself is the one to pass on these questions.

Mr. Shaw: (The Witness):

Mr. Lea, I believe it was, or someone, yesterday asked for a break-down of the amounts paid each fiscal year to the refunding bonds and tax participation certificates, and the amounts reserved, and the amounts paid to the City.

Mr. Berry:

I asked you that question. Mr. Shaw, will you kindly make a typewritten copy of the break-down of those figures for which I asked you, and which you have now supplied in pencil, and file that as Defendant's Exhibit No. 28?

Mr. Shaw:

Yes, sir.

1039 G. N. SHAW was returned to the witness stand and being still under oath, further testified as follows:

Cross Examination.

By Mr. Lea:

Q. Mr. Shaw, I believe you have examined your records and are now prepared to state whether or not a letter was sent from the bondholders' committee to the City or whether or not a letter was sent from the City to the bondholders' committee pursuant to the provisions of the contract so entered into by the City with that committee, as referred to in Defendant's Exhibit No. 2?

A. I have examined my files, Mr. Lea, and the files sent to me by the Mayor's office containing his correspondence, and I find no letter from the City to the Committee, or from the Committee to the City concerning that point. I have no recollection of writing such a letter myself, and have asked the Mayor whether he recalls such correspondence, and was told that he did not. The Mayor was in New York at the time of the signing of the bonds, and it may be that a conversation was had on that point, but I do not know of that, and he told me that his recollection of it was not positive.

Mr. Lea:

As a matter of fact, the point is moot, now, anyway, in as much as the exchanges were made.

A. Yes, sir. Someone else asked me at some time during the proceedings as to the time and conditions of the withdrawals from the Bondholders' Protective Committee. I have no information or knowledge except that the claims deposited with that committee, which had been as high as between 80 and 90%, were reduced to a fraction less than 50%, approximately during the period from the be-

ginning of 1935 until the end of 1937. I have no positive knowledge of the conditions which led to or permitted those withdrawals.

Mr. Clarke:

Mr. Shaw, wasn't it at the same time the bondholders committee was being investigated by the Securities and Exchange Commission, and also the Senate of the United States, the Congressional Committee, I believe it was, that Congressman Wilcox headed?

A. That had no bearing, Mr. Clarke, in my recollection of the matter.

Mr. Clarke:

Would you tell me, first, whether it was about the same time?

A. I do not know; but the withdrawals were based upon certain features of the original deposit agreement, and either a time limitation, or the submission of a question to the depositors.

(At this time there was produced by the witness a schedule, furnished pursuant to a request therefor made by Mr. Lea, and after an off-the-record discussion and corrections being made in the instrument, the following occurred):

Mr. Lea:

I will now submit this document in evidence as Defendant's Exhibit No. 29, having been produced in answer to my request.

(Said instrument was admitted in evidence and marked as Defendant's Exhibit No. 29.)

Mr. Gibson:

I think we are all faced with the proposition of not having had all the transcript; we have been somewhat handicapped by not having the record before us, and not that I at the present time think of anything I want to cross examine Mr. Shaw any further on, but after the record is completed, and I do have an opportunity to read it, if some questions do occur or situations do occur that need to be cleared up, I would like to have that right.

The Master:

The right to cross examine Mr. Shaw further is reserved by the defendants.

Mr. Clarke:

I should like to inquire whether it is the intention of the City to bring Mr. Exselsen in to disclose the details of the various deals handled by him, and the details which you could not testify about because you properly said, Mr. Shaw, you did not handle, if you know?

Mr. Shaw:

Don't you think that would be a proper question to address to counsel in the case?

Mr. Clarke:

I say, if you know.

Mr. Shaw:

I don't know.

Mr. Clarke:

I do address it to counsel present.

Mr. Adams:

I don't know now.

Mr. Clarke:
Well, who does?

Mr. Adams:
Nobody knows that I know of. That's one thing that may be considered on reading the record, really.

(There being no further proceedings, the hearing was recessed, sine die.)

In the United States District Court in and for the Southern District of Florida, Miami Division.

In the Matter of:
The City of Coral Gables, Florida.
In Bankruptcy No. 1867-M.

This Cause came on for further hearing before the Honorable F. M. Hudson, Special Master, at 10:00 o'clock A. M. on the 24th day of June, A. D. 1941, at the City Hall in the City of Coral Gables, Florida.

There was present at said hearing on behalf of the Petitioner, the City of Coral Gables, Mr. Morton B. Adams, City Attorney; Mr. Ira C. Haycock; and Mr. D. H. Redfearn, of the law firm of Redfearn & Ferrell, of counsel for the City; and Mr. G. N. Shaw, City Clerk. There was also present Mr. Edwin M. Clarke, of the law firm of Jennings & Watts, of Jacksonville, Florida, representing C. J. Root, a creditor; Mr. F. A. Berry, of the law firm of Bass, Berry & Simms, of Nashville, Tennessee, for the American National Bank of Nashville, Tennessee; and during the course of the proceedings there appeared Mr. Joseph P. Lea, Jr., on behalf of Ed. C. Wright & Co., a creditor. Mr. Ed. C. Wright was present in person at the opening of the hearing.

Thereupon, the following proceedings were had:

(At the opening of the session, there was discussion had, which was off the record).

Mr. Adams:

I guess we might let the record show, if it is agreeable to everybody, that it is stipulated and agreed that the Petitioner shall have the proofs of claims and consents which have been filed arranged alphabetically and indexed and numbered, to show the number, the name of the signer of the instrument, the date of filing, and the amount of refunding bonds and tax participation certificates included in each consent.

The Master:

Is that agreeable, gentlemen?

Mr. Berry:

Yes, sir.

The Master:

It is so ordered.

Mr. Adams:

At the close of the last hearing, as I understood it, opposing creditors' counsel had not announced whether they were through cross examining Mr. Shaw.

Mr. Berry:

As far as I was concerned, for the American Bank, I had finished.

Mr. Clarke:

I have just a few questions here.

Mr. Berry:

About Mr. Gibson, I don't know; he was called back yesterday on account of the illness of someone, and he will be back during the course of the day.

1044 Thereupon G. N. SHAW was recalled as a witness on behalf of the Petitioner, and being still under oath, further testified as follows:

Cross Examination (Resumed).

By Mr. Clarke:

Q. Mr. Shaw, will you give me, if you know, the winter population of the City of Coral Gables?

A. I do not have an exact figure. The last census preliminary report showed 3301 dwelling units in the City of Coral Gables. Assuming a medium family of three, that would be 9903 persons. The 1930 census gave us a medium family of, I think, 2.84.

Q. Do you know of any source of information or estimation of the number of people who come to Coral Gables in the winter who are not classed as permanent residents and in the regular state and national census?

A. No, sir, I do not. The number is not as great as in most of the other cities of a more resort nature. We have very few large hotels. Our apartments are to some extent occupied the year around. I don't think that there is a great increase in winter population.

Q. Mr. Shaw, on Page 436 and 437 of the Record you mentioned a previous offer by Coral Gables Development Company of $575,000.00 for the delinquent assets. Were those the delinquent assets that were later sold for $396,000.00 or for the $396,000. plus the additional $60,000.00 that were—$60,000 and some odd thousand that were bought at face value?

A. Yes, they were.

Q. Which were they? Were they the same assets that were purchased for $396,000. or did they include those that were later purchased?

A. They were the assets later purchased for $396,000.

Q. Those were the same assets that were originally offered—that the original offer was for $575,000.?

A. That is correct.

Q. Will you state, please, the aggregate value, according to the assessment rolls, of any year from 1936 through date, whichever year is most convenient, of the land on which you sold delinquent tax certificates to Coral Gables Development Company?

A. Referring to the assets sold to the Coral Gables Development Company for $396,900.00, which were the specific transfer of the '32 through '35 taxes, and an escrow of the earlier taxes, I find the closely approximate assessed value of those properties on the 1936 tax roll as being $2,631,000.00.

Q. Now, you refer to escrow of earlier taxes. Under that escrow agreement is there any possibility of the City realizing anything from that escrow?

A. No, sir.

Q. It is true that the only possibility of realizing anything from the escrow is Coral Gables Development Company to realize it; is that correct;

A. That is correct.

Q. And that escrow was to hold '25 to '32 taxes to be delivered as requested, to be canceled or to be used in foreclosure?

A. That is correct, in part, Mr. Clarke. There were very few of the taxes involved for the years 1925, '26 and '27, and they were of questionable value because of the Supreme Court invalidation of the 1928, '29 and '30 taxes, so that in reality all that the company has in escrow is the 1931 tax.

Q. On the figure of $2,631,000. that you gave me, did—that did not include the Shrine Club House Golf Course tract, did it?

A. No, sir. The assessed value of that property was $12,067.00.

Q. It did not include, did it, the $200,000. worth of TPCs?

A. No, sir. The assessed value was purely for the assessment underlying the tax certificates which were transferred.

Q. Did it include any of the value of the rights, if there was any value, of the contracts of the face amount of Three Hundred Sixty-some-odd Thousand Dollars?

A. No, sir. We considered the cash value of that contract as zero.

Q. Did it include any value that you might place on your agreement not to reassess any of the land for special assessments—any of the land on which the delinquent taxes were sold to Coral Gables Development Company?

A. No, sir, it did not include that because we had been convinced by legal advice that there was no possibility of such a re-assessment.

Q. At that time had you been so convinced—at the time of the sale?

A. Yes, sir. We had already fully decided not to re-assess but I believe there was a covenant in the contract preventing a re-assessment simply to clinch the matter.

Q. In Page 462 of your former testimony, did you not testify that at the time of the sale the City hadn't made up its mind not to re-assess?

A. That is correct. The City had not made up its mind not to attempt to make up an assessment, but plenty of legal counsel had been given that a re-assessment would be futile. I might say that the only reason for attempting a re-assessment would be to put the City in the clear, absolutely, on the matter of canceling those

liens, otherwise those creditors might feel it had acted hastily.

Q. Now, Mr. Shaw, what, if you can give me the figure, was the assessed valuation according to your tax roll according to any particular year, of the assets that were sold to the Coral Gables Development Company after the $396,900. transaction, and which involved some $60,785.00?

A. The assessed value was approximately the same, Mr. Clarke, since the tax certificates which they bought for later years were those upon properties included in the original sale.

Q. The $60,785.00 transaction covered some of the same property?

A. Overlapping liens, almost entirely; simply subsequent liens upon the same property.

Q. Mr. Shaw, how many parcels of land, if you know, were covered by these sales of delinquent taxes to Coral Gables Development Company, excluding the one of Twelve Thousand and some-odd Dollar parcel of the Shrine Golf Course?

A. Close to 11,000 parcels.

Q. Were there any other improved parcels?

A. There were no improved parcels.

Q. The Shrine parcel had no buildings on it?

A. No, sir; all of the land affected by this sale was vacant land, and the great bulk of it was in the largely undeveloped area south of Bird Road.

Q. I would like to refer you to the Plaintiff's exhibit showing the percentage of tax collections during the past few fiscal years, being the Plaintiff's Exhibit No. 14.

A. I have it before me, Mr. Clarke.

Q. What is the percentage of tax collections on the 1940-41 roll, which I now understand you have substantially complete collections for that year, and which is shown on this schedule as incomplete?

A. Approximately the same. I do not have that figure yet. We have not finished our tax roll, and collections are still coming in, but approximately the same as for the year 1939-40.

Q. That is, just a few hundred short of 80%?

A. That is correct, sir. I made a study of that about two weeks ago with the then available data, and if I am not mistaken, the difference was less than 1%.

Q. Now, what part of that delinquency is attributable to by taxes on vacant land?

A. Practically all of it, with the exception of a few hundreds of dollars.

Q. And what part—

A. (Continuing.) Let me clear this up before I finish. That is not always true in these years shown, because tax sales might not have been complete or may not have been held within the fiscal year, but in the past several years that has been true.

Q. What part, then, of that delinquent percentage is attributable to lots which were—on which delinquent taxes were sold to Coral Gables Development Company?

A. A quite large part, Mr. Clark, although I do not have the division readily available. The delinquency also includes other lands in the southern area of the City not covered by that transaction with the Coral Gables Development Company.

Q. By a large part, do you mean a majority?

A. A majority.

Q. Would you say that there was at least 10% to 15% of the tax roll involved where the delinquent taxes have been purchased by Coral Gables Development Company?

A. About 10%, Mr. Clarke.

Q. Do the percentages of collections shown on Exhibit 14 include the sale of delinquent assets to Coral Gables Development Company?

A. No, sir. These are the collections of current taxes for the years shown.

Q. Then these percentages do not take into account delinquent taxes that are later collected by a sale of tax certificates?

A. They do, in this way, Mr. Clarke; where properties are sold, in most cases they are brought up to date through the year in which they are sold, and that is reflected in that particular year. However, if the purchaser of the taxes does not carry on, and the lot stays on the delinquent list in later years, of course that constitutes delinquency and is so shown in this statement.

Q. Has the City, or you, or anyone connected with the City, to your knowledge, any agreement or understanding with the Coral Gables Development Company as to when it will commence paying taxes on those lots, and if so, please state what it is.

A. We have no such agreement.

Q. Has the City made any effort to collect by foreclosure or otherwise the taxes for the years subsequent to the delinquent tax sale to the Coral Gables Development Company on the lands therein involved?

A. No. The City only recently has been in a position to do so, and as yet—

Q. What do you mean, has been only recently in a position to do so?

A. The oldest taxes held by the City on those properties are those for the year 1937, sold in 1938, and not foreclosable until after July, 1940.

Q. And since July, 1940, no step has been taken by the City to attempt to collect those taxes?

A. We have been far too busy.

Q. Is it your intention, or do you know whether it is the City's intention to attempt collection now, or as soon as you are not so busy, when this bankruptcy proceeding is finished?

A. I cannot speak for the Commission's future policy, Mr. Clarke, but I can say that the matter has been under consideration.

Q. What is the aggregate amount of taxes due by Coral Gables Development Company for the years 1938 through 1940, if you know, in round figures?

Mr. Adams:

We object to the question, if Your Honor please; there is nothing in the record to show there are any taxes due by the Coral Gables Development Company. The only thing in the record so far is to show that they own liens against the land.

Mr. Clarke:

I will amend the question; strike the whole question.

Q. Will you please state, in round figures, the aggregate amount of taxes from 1938 through 1940 due and payable to the City on account of taxes on the land, the delinquent taxes of which were sold to Coral Gables Development Company?

A. I cannot answer that question exactly, as that company has redeemed and brought down to date the taxes on some of the properties involved in that sale. The taxes held by the City consist of the 1937 through 1940 taxes, or four years, which I would estimate at approximately $200,000.00.

Q. Is that based on a valuation of around $2,600,000?

A. That is correct?

Q. And that is four years' taxes, at 22 mills a year?

A. That was a mental calculation I gave you.

Q. Well, you check it, because I can't check after you.

A. (After making computation.) The taxes purhased for the year 1936 were $60,000.; the four years would make approximately $240,000., and I estimated about—well, I don't know off-hand what figure is shown for redemptions, but I would say the property still in their hands, about $200,000.

Q. I see. Now, the ones where they purchased the taxes—the subsequent taxes, are those the lands on which they have assumed title and sold, or do you know?

A. Either assumed title and sold, or have permitted redemption by previous owners, and in connection with that have cleared up the later taxes.

Q. Those subsequent taxes are in the hands of the City, and now foreclosable?

A. That is correct.

Q. And they are liens on land of the value of approximately $2,600,000.?

A. Approximately that. Somewhat less today, because of those redemptions I have mentioned. The $2,631,000 figure which I gave you was the value of the lands which were sold; the value at that time of all the lands upon which the taxes were sold.

Q. Would they still remain in excess of $2,000,000.?

A. I believe so.

Q. Mr. Shaw, when did you receive or when did Coral Gables Development Company pay to you or your agents the $396,900. for certificates and delinquent taxes and other things that were sold to them?

A. In my recolletion, in October of 1937.

Q. Was that before or after the certificates were delivered?

A. The certificates were delivered almost immediately, and the payment and the delivery of the certificates were concurrent. Actually, the certificates had to be retained in the City Hall for some weeks to make the assignment indorsements, but they were retained here in the custody of an agent of the Coral Gables Development Company.

Q. Now, Mr. Shaw, please examine Exhibit 30-A of the Plaintiff, being a statement which includes, in the next to the last column, the "Total millage if operations maintained at present", which would be required to pay existing mandatory writs for unrefunded bonds, and for the

refunding program. I ask you if in reaching the millages in the next to the last column you took into account the monies which the City now has on hand for payment of interest at the refunding rate from January 1, 1937 through the fiscal year 1939-40?

A. No, Mr. Clarke, because that money would no longer exist in the City's hands. No, we did not take that in account.

Q. That would be money on hand from which the City could, if it desired, apply on the payment of principal, or interest, of the old bonds?

A. It would, but it would make a very small difference in the figures.

Q. How much money would be involved for the years from 1937 to date, in round figures? The money to which I refer is the money which has been levied to pay interest for refunding bonds that have not yet been exchanged with holders of the original securities.

A. The amount on hand as of January 1, 1941, was $19,527.74, and approximately $3,000.00 will go into that reserve as of July and August this year.

Q. Now, Mr. Shaw, on Page 523 of the Record you stated that you would give us the information as to the total amount of refunding bonds now held by the City in trust and the total amount held in other accounts, and what those amounts were. I am unable to find from any exhibit that you have prepared where that information has been given.

A. That's all shown on Defendant's Exhibit 8.

Q. Now, Mr. Shaw, referring to Defendants' Exhibit 8, at the approximate end of the exhibit, Page 9, you show a total of refunding securities issued and acquired by direct or indirect purchase of $479,198.98, of which you show bonds canceled in accordance with refunding plan of $144,198.98, leaving a balance of $335,000.00. of bonds; is that correct?

A. That is correct.

Q. No bonds, then, have been canceled from the trust fund?

A. No, sir.

Q. Canceled, or retired?

A. None. The trust fund at this time holds $18,500.00 of bonds.

Q. Mr. Shaw, the statement that bonds canceled in accordance with the refunding plan means, does it not, that they were canceled in accordance with your interpretation of the refunding plan?

A. Yes, sir; they were canceled annually in approximate accordance, but never less than the amount shown in Section 12 of Ordinance 269.

Q. And you have previously discoursed on your interpretation of the plan?

A. At some length.

Q. Now, Mr. Shaw, the previous testimony shows that there are outstanding in their exact original form 3.07% of the original total of old bonds which are claimed in this proceeding by Wright and/or The American National Bank, and there is .91% of other additional bonds which are in their exact original form. Is there shown on any of the exhibits the maturity dates of those bonds?

A. Yes, sir. Exhibit 21 shows the maturities of all of those bonds with the exception that it does not show the years in which the past due bonds matured, giving instead a total figure for those past due June 30, 1940.

Q. Can you state over what period the June 30, 1940, maturities as shown by Exhibit 21, matured?

A. Yes. Those bonds matured as follows: July 1, 1929 to June 30, 1930, $1,000; July 1, 1930 to June 30, 1931, $4,000; July 1, 1931 to June 30, 1932, $9,000.; July 1, 1933 to June 30, 1934, $1,000; July 1, 1935 to June 30, 1936, $4,000.; July 1, 1936 to June 30, 1937, $5,000.; July 1, 1937 to June 30, 1938, $21,000; July 1, 1938 to June 30, 1939, $4,000.; and July 1, 1939 to June 30, 1940, $17,000.00.

Q. Mr. Shaw, you will recall that the testimony and pleadings in this case show that C. J. Root claims certain bonds which are not identified in his written agreement dated December 1, 1937, which was introduced in evidence as a part of Special Issue Exhibit No. "A". Do you so recall?

A. I do.

Q. Are those bonds included in the 1.84% of the unrefunded securities, or in the .91% of the unrefunded securities, or in the 3.07% of the unrefunded securities?

A. Those bonds are evidently included in the .91% of bonds in the original form mentioned as outstanding in the hands of certain others, and in some cases in this suit mentioned as "in the hands of persons unknown". At the time this exhibit was prepared and at the time our statistics were made, I had no knowledge of the holding of these bonds by C. J. Root.

Q. Mr. Shaw, I don't want to interrupt the answer, but I have got letters with you about them, back in '34 and '35.

A. Let me put it to you this way, then, that at that time I did not recall the owning of these bonds by C. J. Root.

Q. Now, those bonds are in the aggregate amount of $20,000; are they not, sir?

A. They are all December 1, 1925, aren't they, Mr. Clarke?

Q. Yes, I think so; they are permanent improvement bonds, if that's what they were.

A. They are $20,000., yes, sir.

Q. How much does the .91% of the total indebtedness represent in dollars and cents in face amount of bonds?

A. $74,000.00.

Q. Now, of the remaining 54 bonds, as I understand it, 5 have been refunded since these proceedings were commenced; is that not correct?

A. That is correct.

Q. That leaves 49 bonds. Can you account for the ownership of any of those 49 bonds?

A. No, sir; I cannot.

Q. Those are the bonds the owners of which are unknown?

A. That is correct.

Q. Have any coupons been presented on those 49 bonds that you recall, sir?

A. Not any in recent years, Mr. Clarke. They may have come in in the years of the default and through the Committee.

Q. Now, referring to the Committee, and to Defendant's Exhibit No. 9, will you give me the date of payment of interest to the committee during the fiscal year 1936-37 as being the payment shown on that exhibit?

A. I will have to get that for you, Mr. Clarke. I don't have it here.

Q. Mr. Shaw, in getting that, if there was more than one payment during the fiscal year, you will show the varying payments during the year, will you?

A. Yes, sir. You want that for the year 1936-37?

Q. Yes; $58,187.75 paid to the Committee.

A. Yes, sir, I will give you the dates and amounts.

Q. Mr. Shaw, would it be possible for you to state, after the list of consenting creditors is prepared, which of those consenting creditors are taxpayers in the City of Coral Gables? And if not, what officer of the City can so state?

Mr. Adams:

We object to the question as being totally irrelevant and incompetent to the issues involved in this cause, and

in no wise affecting the right of the creditor to vote a consent in this bankruptcy proceeding.

(Discussion, off the record).

The Master:

Well, frankly, I don't see the relevancy of that, Mr. Clarke. (Further discussion off the record).

Mr. Clarke:

I will submit at a later hearing the authorities which I contend to be in support of the relevancy of the question, and at that time will ask the witness for a compilation and an answer, if I may.

The Master:

It is so ordered.

Q. Mr. Shaw, the first question I asked you I would like to clarify again, and that is as to the winter population. In the 9,903 persons estimate, you calculated all dwelling units as single dwelling units, or is that the basis of your answer?

A. No, sir. I took that figure from the census report of dwelling units, which I am sure takes into account apartments and duplexes, because it exceeds by some 500 the number of dwellings that we can possibly have on our roll.

Q. But that does not include the hotels, does it?

A. I believe not.

Q. And how many, in round figures, hotels do you have in Coral Gables?

A. We have about five hotels, most of them with very small capacity. The only hotel of any large capacity is the Miami Biltmore, with 400 rooms. Except for the taxes paid by the Biltmore, I might say further that the Bilt-

more might just as well not exist in Coral Gables because the people who live there spend very little time and money with the merchants in the Gables as far as I have been able to find out.

Mr. Clarke:
That's all I have.

Re-Direct Examination.

By Mr. Adams:

Q. Mr. Shaw, you testified this morning about the parcels of land, approximately 12,000—

A. 11; approximately 11,000.

Q. Approximately 11,000, upon which the tax certificates were sold to Coral Gables Development Company. Now, at the time of this sale to the Coral Gables Development Company were there outstanding in the hands of other parties than the City, other tax sales certificates against these same lands?

A. Yes, sir. In a great many, and I might say a majority of the lots involved, there were prior taxes in the hands of others, most of them in the hands of Coral Gables, Inc. These prior taxes in most cases, for the years 1928 and prior, were based on the old high valuations and were quite high in amount, and constituted a considerable problem in connection with those lots.

Q. Now, do you recall the tax year for which the certificates had been sold to third parties on these lots?

A. The years would be various, Mr. Adams. The great bulk of the taxes outstanding were for the years from 1925 through 1928. For those years we at one time in 1929, I believe, sold approximately $870,000 of those, face value of those tax certificates, and I believe the most of those were still outstanding.

(At this juncture of the proceedings, at 11:50 A. M., Mr. Joseph P. Lea, Jr., arrived at the hearing).

Q. Mr. Shaw, do you have any idea what percentage of these 11,000 parcels had delinquent taxes against them from the tax year 1926 down to and including the tax year 1935, when the sale of certificates was made to the Coral Gables Development Company?

A. I do not know exactly as of that date, Mr. Adams, but studies that I have made of that situation in earlier years would lead me to believe that at least half of them were so affected.

Q. Now, how many years' taxes against these properties are now available for foreclosure under the State law, which liens are held by the City?

A. Only one year, the tax year 1937, sold in 1938, and foreclosable in July of 1940. In July of this year there will be two years', which will include the 1938 taxes.

Q. The 1938 taxes haven't been sold and put in certificate form, and 1939?

A. That is correct.

Q. Now, can you make any statement of the net result to the City on realizing on these tax liens from gradual liquidation of the tax liens, as compared to the foreclosure of all the liens at one time?

A. Yes, sir, I can make a very positive statement from experience. The City previously attempted an omnibus suit with the result that the combined strength of the defenses kept the City in Court for I believe more than four years, and eventually defeated the same. The same thing, I believe, would be true today in an omnibus attempt. I think the City's only chance of foreclosure is to do it gradually and in small groups of property. I further think that the ultimate effect upon the city, even if the city were successful—if an omnibus suit were successful, would be very bad. The City would come into pos-

session of a great many lots, we will say approximately 10,000, and there would be no conceivable market for those lots, and they would be off the tax rolls. When marketed, they would be subjected to, being in the hands of the City, to political pressure, affecting the price. The lots, in the hands of the City in that quantity, being sold at reduced prices, would unquestionably affect the market price, and the sale value of the lots which are now current as to taxes, and I could see nothing but a serious problem in such an attempt at this time.

Mr. Berry:

If the Court please, we move that the answer be stricken, first, as the witness' opinion, and second, as his recitation of an unsuccessful law suit which we have no way of checking whether it was properly or legally tried under the laws of Florida which do permit a foreclosure suit, and thirdly, he puts it on the ground there will be political pressure brought on the City, which means that the City Commission will anticipate it will not discharge its duty, and I don't think that answer throws any light on the issue here, and we move it be stricken.

The Master:

The motion is denied.

(The Witness):

A. Since the answer stands, let me qualify that "political pressure". I do not express myself clearly sometimes. There is no question that with 10,000 lots in the hands of the City, that great efforts would be made to get the city to liquidate many of those lots in new sections—

The Master:

Just a minute, Mr. Shaw. I have overruled the objection to the answer you have made, but I think that's enough.

A. O. K., sir.

The Master:
I will strike this additional answer.

Q. Mr. Shaw, you mentioned some gradual liquidation of the tax liens against portions of these properties. In those liquidations are the debt service portions of the taxes collected in full by the City?

A. They are.

Q. And has that been done as to all liquidation of tax liens owned by the City since the refunding plan went into effect?

A. It has. Let me qualify that, Mr. Adams. There have been one or two exceptions, but in those exceptions there were specific reasons. In one case, taxes had been levied as an improved property, and had been carried on the rolls for many years in that way. Investigation showed that the improvement which existed on that property would have to be demolished in order to make way for any usable improvement, and in that case the entire taxes were adjusted to restore that land to the rolls. I remember that case specifically. There might have been one or other very minor cases of that kind.

Q. Involving how much in assessed value?

A. Involving not more than $1,500.00 to $2,000.00 in assessed value at the very most.

Q. Now, Mr. Shaw, as to these approximately 11,000 parcels of land, where are they located in the Gables?

A. In the main, in the area bounded on the north by Bird Road, and on the south by Sunset Road, and on the east and west by the eastern and western boundaries of the City. Specifically, the Riviera sections, the industrial section and Country Club section, Part 5, all of which are very sparsely developed.

Q. Is that area of the City as to streets, parkways and other developments, in keeping with the condition north of Bird Road?

A. No, sir, it is not. The streets and sidewalks and parkways were put in over most of that area, but the City has not been able to maintain those improvements as it has north of Bird Road, except in the case of the more important streets such as Hardee Road, Granada Boulevard, and others of that class.

Mr. Adams:

I think that's all on that phase. Do you want to examine him on that?

Re-Cross Examination.

By Mr. Clarke:

Q. Mr. Shaw, what years' assessments of the City of Coral Gables was it that was held invalid by the Court?

A. The years 1928, 1929 and 1930. I believe that the invalidity applied directly to the 1928, which was the basis of the foreclosure. The other two years, I believe, Mr. Adams, were simply joined in the suit with them, were they not?

Mr. Adams:

No; they were all past due.

Q. Did you not testify that most of the tax certificates in the hands of private individuals on the lands on which the delinquent taxes were sold to the Coral Gables Development Company were for the year 1928?

A. 1925 through 1928, I believe I said, Mr. Clarke. The holding of invalidity did not directly affect taxes which had been sold to others. The City was—the taxes still in the hands of the City were declared invalid, but another question arose in connection with those which had been sold.

Q. Now, you testified that one year's certificates were now available for foreclosure. Isn't it true that when

that certificate is available for foreclosure that you can add subsequent taxes in your foreclosure suit?

A. I cannot answer that under existing laws, Mr. Clarke. That was true in connection with, or in the case of our foreclosure commenced in 1933; whether it is still true or not, I am not sure.

Q. Then you don't know whether there is just one year that is now foreclosable; is that right?

A. In my opinion there is one year that is foreclosable now.

Q. There is one certificate—?

A. There is one certificate.

Q. And you do not know whether you can add subsequent taxes?

A. No, sir.

Q. Now, Mr. Shaw, had you considered the possibility that on the foreclosure of the four years' taxes now due on these lands in which Coral Gables Development Company has already put $396,900.00 plus $60,000-some odd thousand dollars, and which are worth over $2,000,000, that if foreclosure suits were commenced, or if the City made a demand, that the taxes might be paid, sir, rather than the City acquiring the property?

A. I have considered that, Mr. Clarke, and in my opinion that would not be the case.

Q. It is your opinion that the Coral Gables Development Company would allow foreclosure?

A. It is my opinion that they would resist that foreclosure to the utmost.

Q. Well, is it your opinion that they would allow the lots to be bid in by the City without protecting their interest?

A. It is my opinion that they would enter the foreclosure suit and the City, being not in a position financially to protect itself as well as the company, the City would ultimately take a severe licking on the amount it would receive from its taxes.

Q. Now, in your contemplated XYZ Corporation handling of these delinquent assets, did you not testify that one of the purposes of the XYZ transaction was to collect something on the old taxes, and also to get these properties back on the tax roll?

A. That is correct, sir.

Q. And was that one of the purposes of the sale to the Coral Gables Development Company?

A. Not entirely so. It was hoped that that would be the effect. The so-called XYZ proposition was a very different one, in which the City was to hold the taxes in escrow, to be released gradually, and the corporation was to make an effort to reinstate the original owners in the land and take its profit from the success of that effort. Frankly, it was a beautiful plan in theory, but one which was impractical, and that's the reason it was dropped, I think.

Q. Was any attempt made by the City at the time of the sale to the Coral Gables Development Company to get assurance that the property would be put back on the tax roll?

A. No, sir. The City felt that in the natural course of events the property would come back to the tax rolls. It is not possible to get an assurance of the payment of taxes on 11,000 lots which are speculatively held, and with perhaps an old haul into the future.

Q. Is it your opinion that by careful handling over a period of years you will collect all of those taxes without a blanket foreclosure?

A. I can only refer to Plaintiff's Exhibit 22, in which we have theoretically estimated that there will only be 3,281 of the vacant lots unused at the end of that period in 1976-77. That estimate assumes that somewhere along that period of years most of those properties will return to the rolls.

Q. But that exhibit, and no other exhibit, estimates those delinquent assets that you will collect as a part of the anticipated revenue, does it?

A. No, sir.

Mr. Clarke:

That's all.

A. (Continuing.) I have estimated that, Mr. Clarke, and have stated in the record what that estimate is. In connection with Exhibit 27, Mr. Clarke, I believe that I stated our estimate of the remaining delinquency at the end of 1977 would be approximately $112,000.00, so that $417,000. of the amount in Column "C" would have been collected sometime during the period. We also guess as to the interest at an average of two years interest-bearing life, $116,700.00 of interest, making a total of $534,117.00 to be realized from delinquent taxes. This would simply offset the delinquencies accruing during the period, and would bring the amount remaining for the TPCs remaining at $3,990,000., as shown on the exhibit in Column "P".

Mr. Clarke:

That's all.

(At this time a recess was taken from 12:15 to 1:30 P. M., at which time the examination of the witness was resumed):

Re-Direct Examination (Continued).

By Mr. Redfearn:

Q. Mr. Shaw, shortly before adjourning for lunch, in answer to a question asked you by Mr. Clarke you made this statement: "It is my opinion that they would enter the foreclosure suit and the City, being not in a position

financially to protect itself as well as the company, the City would ultimately take a severe licking on the amount it would receive from its "taxes". Just what did you mean by "the City not being in a position to protect itself as well as the company"?

A. What I meant, Mr. Redfearn, was that the City not being in a position to protect itself financially as well as the company could protect itself.

Q. To what company did you refer?

A. The Coral Gables Development Company, the holder of these outstanding liens.

Q. Well, has the City of Coral Gables any agreement in writing or otherwise, public or private, to protect the Coral Gables Development Company or any other company, or show it a preference over any other creditors of the City?

A. Absolutely not.

Mr. Redfearn:
That's all.

Re-Direct Examination (Resumed).

By Mr. Adams:

Q. How, in the foreclosure of tax liens, Mr. Shaw, does that question of the ability to protect yourself come about?

A. The question of the pro-ration of the taxes, largely, Mr. Adams. The Company—I'm speaking of the Coral Gables Development Company as if it still held all of these liens, which we will assume it does; the amount of the liens held by that company would far outweigh the amount of liens held by the City. Furthermore, the amount of the liens which the company could put in would have much greater interest allowable on it. If it came to a matter of bidding for the property, the company could run the bid up to a point where it would

get its investment, and maybe a profit out of it, and stop, and leave the City holding the bag. On the other hand, if the City did not have the money to go high on the bid, the company might take it at a very reduced figure, and the City would have to take its pro-rata share of that reduced figure, which would be perhaps only a small percentage of the tax liens it would be foreclosing. And the State and County taxes would have to be taken into account by whichever side was the successful bidder in the suit.

Mr. Redfearn:

What do you mean by "taken into account"?

A. And paid. Incidentally, that is another bar to the city's proceeding at this time. The State law does not exempt on the tax rolls of the State and County, property which is acquired by cities in the enforcement of their own tax liens, so that if we took over this property, we would have to be prepared to meet the State and County taxes as they became due, in order to protect our interest.

Mr. Haycock:

Would the City then be permitted, or would they assess these liens that they would purchase, to themselves each year after the purchase at a Master's sale?

A. It would be futile if they did. The lands would be in the city's title, and in my mind it would not be legally proper for them to be assessed, and at any rate, it would be lost motion, because the property would have to be sold as such regardless of the future taxes the City might lay against it.

Mr. Adams:

That's all on that.

Re-Cross Examination.

By Mr. Lea:

Q. Mr. Shaw, do you know the total amount of the face value of the tax certificates held by the City prior to the year 1931, which were, under the contract, to be held by the City in escrow for the development company?

A. I believe I have already put that in, Mr. Lea.

Mr. Clarke:

Yes; that's in the record. I will give him the information.

A. Do you want it again at this point?

Q. If you have it.

Mr. Clarke:

It is at Page 458.

Q. Just repeat it, please, because I would like to have the answer.

A. The total amount of taxes which theoretically were to be held in escrow for the years 1925 through 1931 as of the date of this transaction, October 31, 1937—the approximate date of the transaction, was $1,985,516.23, from which must be deducted the 1928, 1929 and 1930 taxes, which the City later tried to re-assess and was unsuccessful in the attempt, which amounted to $1,540,086.92, so that the net amount held in escrow after the failure of the reassessment was $445,429.31.

Q. Mr. Shaw, are you familiar with the decision of the Supreme Court holding the one assessment of special assessments invalid?

A. I was at one time, Mr. Lea. I am roughly familiar with it at this time.

Q. Did the City attempt to re-assess those special assessments after that decision?

A. No, sir.

Q. Were you advised that you could re-assess them, properly?

A. We were advised that it would be futile to attempt the re-assessment of them.

Q. But you were advised that they could be legally re-assessed; is that correct?

A. No, sir. No, sir. My recollection is that we were advised to the contrary. I think I stated this morning that the City considered a re-assessment purely from the standpoint of carrying the matter to the last ditch and not having the appearance of dropping those liens prematurely and to the disadvantage of the creditors.

Q. Of course, anything you say would have to be guided further by the opinion of the Supreme Court in that matter, would it not?

A. Yes, sir; and an interpretation of that same opinion.

Mr. Lea:

I have no further questions.

Re-Direct Examination (Resumed).

By Mr. Adams:

Q. Mr. Shaw, have you made or had made under your direction, an audit of the proofs of claim and consents filed in this bankruptcy proceeding subsequent to the filing of the Petition in Bankruptcy?

A. I have, Mr. Adams.

Q. Can you state the total amount of refunding bonds and the total amount of tax participation certificates included in these proofs of claim and consents to the consummation of the plan?

A. Our audit of those proofs of claim showed $2,865,000. of the refunding bonds, and $4,988,198.95 of the tax participation certificates appearing as consents.

Mr. Clarke:

As of what date, Mr. Shaw?

A. Mr. Clarke, I can't say the exact date, but that was after the last consents were filed on December 12th, I believe, 1940. Wasn't that the last filing?

Mr. Adams:

Yes.

A. And within the last three months. I neglected to put the exact date of the completion of this audit in here.

Q. Now, Mr. Shaw, have you had a check of the refunding bonds and tax participation certificates listed in those several consents made to determine whether or not any of those refunding bonds and tax participation certificates are owned, held or controlled by the City?

A. I have, Mr. Adams, and none of them are owned, held or controlled by the City.

Q. What percentage of the total indebtedness involved in this Plan of Composition are the totals of refunding bonds and tax participation certificates which you have just given as being in the consents on file?

A. The consents represent 79.09% of the refunding bonds issued and to be issued, and 73.9% of the tax participation certificates issued and to be issued. The aggregate is 75.719% of all of the debts, measuring them by the common yardstick of the January 1, 1937 value.

Q. Now, Mr. Shaw, I hand you two proofs of claim and ask you whether or not they are included in these totals that you have just given.

A. They are not, Mr. Adams. These proofs of claim were received subsequent to our last filing of proofs of claim and represent securities which were not included in any of those filed.

Mr. Adams:

Now, if the Master please, we offer now to file proof of claim, and as a consent to this bankruptcy proceeding, executed by Mary E. Sammis, executed on February 25, 1941, and another executed by Robert Szold, executed November 27, 1940.

Q. But before offering them, I want to ask Mr. Shaw whether he noted whether the securities described in these consents are owned, held or controlled in any manner by the City.

A. They are not.

Mr. Adams:

We want to offer these as acceptances coming in during the hearing, for filing as acceptances of the plan of composition, to be added to the others.

Mr. Lea:

We will have to object to these because that's in direct violation of Judge Holland's order, and also in direct violation of the Bankruptcy Act. We don't care to argue it now, but we do want to be heard on it before the case is over, because if they can file them now, why of course any time can be set; it is just a question of them running them down.

(Further discussion had, off the record).

The Master:

Well, I am going to sustain the objection for the present. Counsel can present these later and let the whole question come up at once. Possibly we may have to refer it to Judge Holland; I don't know about that; but for the present the objection will be sustained.

Mr. Adams:

May we mark the statement regarding them and the two claims for identification? It will be Plaintiff's Exhibit No. 48.

(Said statement with proofs of claim attached marked as Plaintiff's Exhibit No. 48 for Identification only).

By Mr. Adams:

Q. Mr. Shaw, you were asked in your cross examination about the litigation with the Barker Committee, and testified about a suit by the Barker Committee to place in judgment a certain number of bonds. Was there any other litigation with the Barker Committee?

A. Yes, there was, Mr. Adams.

Q. What was that?

A. I don't recall the exact date. I believe early in 1935 the Barker Committee brought an injunction suit seeking to restrain the City from using more than approximately 15% of its tax levy for that year for operating purposes, and seeking to impound the other approximately 85% for the benefit of the Committee and the other creditors, and I believe requiring an accounting of the monies already collected under that levy. That suit, to my recollection, was dismissed, and the injunction was not made effective.

Q. Was the suit resisted by the City?

A. Oh, yes; yes, sir.

Q. And the final outcome was a dismissal?

A. Yes, sir. That suit, incidentally, was in Federal Court, I believe, and the City opposed the suit vigorously, and the injunction was not granted.

Q. Do you recall whether or not the suit to place the bonds and coupons in judgment was instituted during the pendency of that injunction suit?

A. They were pretty close together, at any rate, Mr. Adams. I don't recall the exact dates, but I believe the two cases overlapped.

Mr. Adams:
That's all.

Re-Cross Examination (Resumed).

By Mr. Clarke:

Q. Is the case you refer to the case of Edwin H. Barker, et al. vs. The City of Coral Gables, No. 1249-Miami-Equity, in U. S. District Court?

A. If that is it. I don't remember the case number. If that is a suit for an injunction, that is the case that I refer to. There was only one such case.

Q. This appears to be a suit in equity for an injunction.

A. Yes, sir, that is the case.

Q. Mr. Shaw, I hand you the file of the City Attorney on the suit just referred to—

Mr. Adams:
No; that's the Court file.

Q. Oh; excuse me; the Court file in the case just referred to, and ask you to refer to an instrument called "Opinion, findings and conclusions", signed by Judge Halsted L. Ritter, and appearing to be filed with the Clerk on April 2, 1935, and ask you if that is the original of the opinion and findings and conclusions of the Judge in the case to which you refer?

A. Since this is the Court file, Mr. Clarke, I assume this is the original. It appears to bear the signature of Halsted L. Ritter.

Mr. Clarke:
I will offer that by calling it a copy of it, and will substitute a copy of it. Is that all right?

Mr. Adams:
Yes, sir.

Mr. Clarke:
I now offer in evidence a copy of the opinion and findings of the Court, just referred to in the above Barker case, as Defendant's Exhibit No. 30.

The Master:
The copy will be so marked when presented.

Mr. Clarke:
That's all.

By Mr. Adams:
Q. Mr. Shaw, have you made a study of the City's schedule to the Petition in Bankruptcy to determine the number and amount of coupons which are outstanding and unrefunded, and as to which the bonds have been refunded?

A. Yes, Mr. Adams; as of January 1, 1937, the unrefunded coupons for which no bonds were outstanding, as shown by Exhibit "C" to the Petition, total $10,790.00.

Q. Are the detailed descriptions of these unattached and stray coupons given in this Exhibit "C" to the Petition?

A. They are, sir. The number of the bond to which they are related, the number of the coupon, and the amount of the coupon all appears in Exhibit "C".

Mr. Adams:
Now we want to offer in evidence a true copy of the Alternative Writ of Mandamus issued in the Circuit Court of Dade County in the case of State of Florida ex rel. American National Bank of Nashville, Tennessee, vs. The City of Coral Gables, et al., the true copy being one of

the copies of the Writ served upon the City in that case. I might say here, we have the original Court file with which you can compare this offered and tendered true copy.

Mr. Berry:
Other than the fact it seems to uselessly encumber the record, we have no objection to it, Your Honor.

The Master:
It is admitted.

(Instrument admitted and marked in evidence as Petitioner's Exhibit No. 49.)

Mr. Adams:
If the Master please, at this point we have procured from the proper source, evidence of the authorization of certain parties who executed proofs of claim and consents in a representative capacity, which have been objected to by the opposing counsel because the proof of claim and consent did not show the authority of the person. Now, since we are having the proofs of claim and consents listed and indexed and numbered, we would like to defer the filing of those instruments so that it can be done in a more orderly way with the numbered proofs of claim and consents.

The Master:
All right.

Mr. Adams:
That's all for Mr. Shaw.

(Witness excused).

Mr. Adams:

That's all we have at this time, and we are ready for them to go ahead. With the understanding and upon the statement of the Special Master that we will not be cut off, the Petitioner rests its case in the main.

(Thereupon, after an off-the-record discussion, and upon announcement by counsel for the objecting creditors that they would be ready to proceed on the following morning, the hearing was adjourned at 2:25 P. M. until 9:30 o'clock A. M., June 25, 1941.)

Thereupon, at 9:30 o'clock A. M., on the 25th day of June, A. D. 1941, the hearing in the above cause was resumed.

There was present on behalf of the Petitioner, Mr. Morton B. Adams, City Attorney; Mr. Ira C. Haycock and Mr. D. H. Redfearn. There was present on behalf of the objecting creditors, Mr. F. A. Berry, Mr. Joseph P. Lea, Jr., Mr. Edwin M. Clarke and Mr. W. Terry Gibson. Mr. Ed. C. Wright, a creditor, was also present.

Thereupon, the following proceedings were had:

The Petitioner having rested its case in chief, the following proceedings were had on behalf of the objecting creditors:

Messrs. John H. Manley, Wallace D. Bradford, Townsend Wainwright and Roy Hollis, called as witnesses on behalf of said creditors, were called and sworn, and placed under the witness rule and excluded from the hearing room.

Mr. Clarke:

May it please the Court, I should like to present to the Court the case I stated I would present, at the very end of the hearing yesterday, with regard to the question that I asked as to what of the consenting creditors were taxpayers in the City.

The Master:

Proceed.

Mr. Clarke:

Take this for the record. I am now reading from the case of Kaufman County Levee Improvement District No. 4 vs. Mitchell, in the Circuit Court of Appeals of the Fifth Circuit, decided January 7, 1941, and reported in 116 Fed. 2d. 959. This is a municipal bankrupty case.—That's all for the record. (Citation read to the Master, and argument presented thereon).

The Master:

Well, I can't rule on what may happen. It is very clear to me that the Kaufman District case is not based on the mere fact that some of the bondholders were property owners in the district. There are a lot of other facts there that were taken into consideration, and if I should adopt the rule that a bondholder must be excluded because he is a resident of the district, it seems to me that it would practically obstruct the operation of this law, and therefore the objection to the question is sustained.

Mr. Clarke:

May it please the Court, there is no way you can prove these things except one bite at a time, and until we can find out which the bondholders are that are taxpayers, and that's the question I have asked, there is no way we can prove any further matters as to those bondholders, and

so while I understand your ruling is the fact that a man was a taxpayer might have been one element and certainly was one element in the Kaufman case, that this Court is now denying us the right to ask that particular element, which is the first element, and that is, who they are, and then the development can be made as to the other facts to which your Honor refers.

The Master:
The ruling stands.

Mr. Gibson:
Do I understand your ruling, then, Your Honor, that we are to be denied the right to inquire as to what taxpayers owned bonds and the circumstances and conditions under which they got them, and the aggregate amount of those bonds?

The Master:
At this time, you are.

Mr. Clarke:
That's all I have on that matter.

1085 ROY HOLLIS was thereupon called as a witness on behalf of the objecting creditors, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Berry:
Q. This is Mr. Roy Hollis?
A. Yes.
Q. How old are you, Mr. Hollis?
A. Twenty-nine.

Q. Where do you live?
A. St. Petersburg, Florida.
Q. What is your business?
A. I am a statistician.
Q. Are you working independently, or for some firm?
A. For a firm.
Q. What firm?
A. Ed. C. Wright & Co.
Q. At the request of Mr. Lea and myself, as counsel for the American National Bank and Ed. C. Wright & Co., did you procure one of the official maps of Coral Gables?
A. Yes.
Q. I will ask you, at our request if you went to the records of the City of Coral Gables to determine the pieces of property that were embraced in the liens sold to the Coral Gables Development Company?
A. That's right.
Q. And did you at our request take the map that you have stated you procured, and shown in red on that map the various tracts of land that were involved in the sale of the tax liens to the Development Company?
A. That's right.
Q. I will now hand you a map and ask you if this is the map.
A. That's the map.
Q. Assuming that that is the correct and official map, of the development company, can you state of your own knowledge that where this red coloring appears on here, they are the tracts of land the tax liens of whch have been sold to the Coral Gables Development Company?
A. I got the information from the City records.
Q. And that is official?
A. Yes.

Mr. Berry:
I will ask that this map be filed as Defendants' Exhibit 31. Is there any objection to the introduction of that?

Mr. Adams:
No objection.

The Master:
Let it be filed.

(Instrument admitted and marked in evidence as Defendants' Exhibit No. 31.)

Mr. Berry:
That's all we care to ask him. Cross examine him.

Mr. Adams:
We have no questions to ask him. We will check the exhibit ourselves. If we care to cross examine him we will do that later.

(Witness excused.)

1087 WALLACE D. BRADFORD was called as a witness on behalf of the objecting creditors, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Berry:
Q. Please state your name.
A. Wallace D. Bradford.
Q. What is your age, Mr. Bradford?
A. Forty-one.
Q. What is your present occupation?

A. My present occupation is that of municipal reorganization, or commonly might be expressed as handling the readjustment of municipal obligations.

Q. Mr. Bradford, what education did you have in the way of schooling?

A. My scholastic education ended with graduation from high school.

Q. And when you graduated from high school, what did you do next?

A. I next became connected with the banking business. I was with the bank in West Palm Beach, Florida, from 1918 through 1919. After that I continued the banking business at West Palm Beach, Florida, until 1926.

Q. And in 1926 what did you do at that time?

A. In 1926 I was employed by the City of West Palm Beach, Florida, and went into the auditing department of the City. A few months thereafter I became treasurer and auditor of the City, and shortly after that the Assistant City Manager was added to my duties.

Q. Will you state to some extent what your duties with the City of West Palm Beach comprised, and what familiarity that gave you with municipal government, just in general terms?

A. My duties with the City of West Palm Beach comprised handling all of the budgetary affairs of the City; that is to say, compiling various statistics with regard to the budgetary operations of the City, supervision of the various clerical and financial divisions of the city, and the major part, of course, of my work at that particular time was with respect to the default of the city which was then at first imminent, and which later became actual.

Q. How long was your connection with the City of West Palm Beach?

A. Until April of 1931.

Q. And what did you do after you left the City of West Palm Beach?

A. After I left the City of West Palm Beach I opened an office in New York City for the purpose of doing the work which I am now engaged in.

Q. Please state more in detail the nature of the work, and for whom you have worked, in some detail.

A. I went to New York in April of 1931 to act as secretary of bondholders' committees for three Florida communities, namely, St. Petersburg, Sanford and West Palm Beach. Shortly after assuming those duties there were other committees organized with respect to other places in various parts of the United States, and those committees which approached me and which I felt justified in taking the secretaryship of them, I assumed such roles. In that work it was necessary that I handle statistical affairs of the committees. I kept their records. I handled the correspondence with the holders of the bonds, subsequently the depositors of the bonds. The major part of my work in that connection was making studies or participating in the making of studies of the various taxing units whose bonds were represented by the committees, to determine the ability of those communities to meet their obligations and to determine what sort of plan could be devised that would give the maximum of benefit to the creditors and the maximum of safety to the securities to be issued by the various municipal units.

Q. Was a part of your duties the determining of the ability of the municipality to pay, including the amount which could be paid yearly on indebtedness outstanding, principal and interest?

A. Yes, sir.

Q. Do you still maintain your office in New York City?

A. I do, sir.

Q. Have you any other residence than that?

A. Yes, sir. My legal residence is on Merritt Island, Brevard County, Florida.

Q. And how long has that been your legal residence?

A. Since September, 1940.

Q. Could you tell us approximately how many communities that were seeking a composition under this Act, or voluntary adjustment of their indebtedness you have worked for?

A. I have not worked for any of those communities, Mr. Berry. I have worked in every instance for the creditors of those communities.

Q. Well, how many communities were involved?

A. There were 94 separate taxing units involved in the readjustment of debts through my office.

Q. And can you give us some idea of the aggregate amount that was involved in the readjustments?

A. I made a tabulation before I left my office last week, and the amount is slightly over $163,000,000 par amount. Of that amount, approximately $152,000,000 of bonds have been readjusted and those bonds have now either been redeemed, refunded or adjusted in some way so that they are now on a current basis.

Q. And out of the readjustments in which you participated in the capacity you have stated, how many of them went back into default after the readjustment?

A. None.

Q. From your experience, Mr. Bradford, do you feel that you are competent to pass on the ability of a municipality to pay in a readjustment of its bond issue?

A. I do.

Q. At the request of Mr. Lea, representing Ed. G. Wright & Company, and myself, representing the American National Bank, and perhaps others with whom you have discussed it, have you made a study of the affairs of Coral Gables?

A. Yes, sir.

Q. On what did you base your study of Coral Gables?

A. I based my study of Coral Gables primarily on the copies of the exhibits, Nos. 1 to 40, inclusive, that were submitted by the City in this proceeding, and on the

audits of the independent auditors, the firm of Pentland, and so forth, for the past several years of the City of Coral Gables.

Q. Have you the copies here in the Court room on which you based your study, Mr. Bradford?

A. Yes, sir. (Producing same and handing them to counsel.)

Mr. Berry:

If the Court please, at this time we submit the copies which have been furnished by the City, and the audits which purport to be copies of audits, furnished by the City, and we can have the witness examine the official copies to testify that they are correct unless it is otherwise agreed to that these are the copies of the exhibits furnished by the City, and copies of audits, and that they are correct copies.

Mr. Adams:

We have no objection to using the copies so long as they are copies, and I think as we proceed we can tell at a glance whether they are proper copies, and you may proceed.

Mr. Berry:

If we may state the agreement in this way, that it is agreed that the records from which the gentleman is testifying are correct unless an error is discovered, and that the City may at any time object to reference to any particular paper on which the gentleman relies in that event, but we shall then have the opportunity of showing the correctness of the paper which is objected to, and in the absence of objection they will be presumed correct copies of the exhibits in this case, or audits furnished by the City?

Mr. Adams:
That's satisfactory.

The Master:
Let the agreement be noted.

Q. What is your address in New York City, Mr. Bradford?
A. 115 Broadway.

Mr. Berry:
If Your Honor please, we are submitting the witness as an expert on the ability of the City to pay in a composition or reorganization of this type, and we now offer him for cross examination, if the City so desires, before he testifies further as to the facts.

Mr. Adams:
We will waive cross examination on the qualification of the witness.

By Mr. Berry:
Q. Now, Mr. Bradford, in determining the ability of a municipality to pay, do you attempt to make an independent appraisal of the property subject to taxation within the municipality?
A. No, I do not, Mr. Berry.
Q. Do you attempt, as a matter of fact, by comparison or otherwise, to determine the suitability of the tax rate?
A. Do you mean by that the suitability of the tax rate as to the ability to produce sufficient taxes to meet the obligation, based on the assessed valuation as it exists, or do you mean that the tax rate is such that the taxpayers are able to meet that obligation?
Q. I'm not here talking of the ability of the taxpayers to meet it; I'm talking as to whether or not you can

arbitrarily state from your experience whether a tax rate is too high or too low for the best interest of a municipality?

A. Yes, I think I can.

Q. Now, in your investigation, how do you determine the ability of a city to pay? What is your first element in that?

A. The first element in determining that is the past experience of the City in collecting taxes. That is, to me, the fundamental point; how much can the City collect to service its debt.

Q. Over what period of time do you examine the amount produced by taxes in a city in making that examination?

A. That depends to some extent upon the record of the City and growth and performance, but usually three or or four years is adequate, in my opinion.

Q. What examination did you make, now, of Coral Gables, in determining its ability to pay? Please state the various steps that you went through.

A. First of all my study of Coral Gables worked around its ability to collect taxes for debt service over the past few years. Now, more or less collateral to that were various other facts to be considered. In the first place, in Florida, there being in existence the homestead exemption act, it is necessary, though as I said before I do not attempt to appraise the value of real estate, to determine at least that the assessed valuations do not seem to be extremely high nor, because of the homestead exemption act, extremely low, and I think the reason for that is obvious. If the assessed valuations are extremely low, it shrows out of ratio the correct payment of taxes. Now, then, if there appears to be a general revolt as to the amount of assessed valuations, it would seem to me obvious that there must be something radically wrong with the method of assessing taxes and the amount of tax

assessments. If, on the other hand, there seems to be no such revolt existing, and if the tax assessment rolls seems, after a physical examination of the City, without making any actual appraisal, which again I state I do not feel qualified to make, the assessment roll seems to be somewhere near an adequate figure, then I accept that tax roll as a basis as somewhere near correct as to the ability to pay. So much for the collateral feature.

Q. Are you referring now to the tax roll as determined by the City itself?

A. Yes, sir, that's correct.

Q. And you accept that, unless you find one of the factors to make you disagree with it which you outlined?

A. That's correct. Now, then, I prefer in determining the ability of a community to pay, to take into account the geographic location of that particular community with respect to, let us say, travel, and with respect to its proximity with other communities, and to take into account the growth of those other communities on the basis that as those other communities grow and develop, it seems quite evident that the community in question should and will likewise benefit to some extent. Also, I think it well to take into account the type of people who live in a community, because I think, after all, the type of citizens of the community determines to a large extent the ability of that community to pay, because in the final analysis, it is my opinion that the full faith and credit of a community can largely be summed up by the willingness of the people of the City to meet its obligation. I also like to take into consideration other collateral factors, such as the number of income tax returns that are filed in that city, determine the per capita or rather the ratio of income tax returns to the population; I prefer to go into the matter of retail sales as published by the United States Department of Commerce, which I think is an interesting factor. At least, I think they prove the ability of the people within that city to purchase, and the willing-

ness of those people to purchase in their local community, all of which benefits that community. So that all of these points revolve around how much is the city able to collect in taxes to service its debt, and is the city able to be apt to continue those collections.

Q. Now, did you apply the factors which you have enumerated to Coral Gables?

A. I did, sir.

Q. I will ask you whether or not through Ed. C. Wright & Co. you obtained a statement from the Internal Revenue Bureau as to the number of income tax returns made by the citizens of Coral Gables?

A. Yes, sir, I did.

Q. Will you state the percentage?

A. I have a letter written to Ed. C. Wright & Co. under date of June 18, 1941, from the office of the Income Tax Division of the Internal Revenue Department at Jacksonville, Florida. That letter gives the number of income tax returns for the year 1939 which were filed by various cities selected at random in the State of Florida. Those figures show that in Coral Gables, with an official population in 1940 of 8,294, there were 1,313 income tax returns of 1939 that were filed. In other words, 15.83% of the permanent residents in Coral Gables in 1940 filed 1939 income tax returns. Of the other cities which are twenty in total, the next city which approaches that record is the City of Gainesville—no—pardon me—the City of Sarasota, the ratio of which was 8.01.

Q. Now, Mr. Bradford, have you prepared a statement showing the percentages that you have outlined, as well as other cities, including the entire twenty that were given to you in the letter from the Treasury Department?

A. Yes, sir, I have.

Mr. Berry:

We will offer that as Defendants' Exhibit No. 32.

Mr. Adams:

We object to the introduction of the exhibit as not being the best evidence; it is secondary evidence; and as having no relation to the tax collectibility of properties in the City of Coral Gables.

The Master:

The objection is overruled.

(Thereupon the instrument was admitted and marked in evidence as Defendants' Exhibit No. 32.)

Mr. Berry:

We will now offer as a basis of this letter—of this exhibit, the letter of the Treasury Department of June 18, 1941, from which the witness has testified, with this exception; on the exhibit appears certain figures in pencil that were put thereon by the witness or someone at his direction, which are not part of the original letter. They can either be erased or a notation made that they do not constitute anything furnished by the Government. They are the percentages which are embraced in this other list. There is nothing that appears thereon that is not in the Exhibit 32 heretofore filed.

Mr. Adams:

We renew our objection.

The Master:

Objection overruled.

Mr. Berry:

We offer that as Exhibit 33, if Your Honor please.

The Master:

It seems to me you had better erase those pencil notations.

(Pencil notations referred to above were removed from the instrument, and thereupon the same was admitted and marked in evidence as Defendants' Exhibit No. 33.)

Q. Mr. Bradford, have you with you the report of the Department of Commerce of the United States, showing the retail trade in Florida for the year 1939?

A. Yes, sir.

Q. Does that show a comparison of the trading done in retail here in Coral Gables with other comparable towns?

A. In this report of the United States Department of Commerce, it shows the number of stores, and amount of retail sales of other cities in the state of Florida for the year 1939, which cities have in excess of 2,500 population. It shows, rather, the amount of retail sales in the City of Coral Gables during 1939, and of every other city in the state of Florida which has a population of over 2,500.

Mr. Berry:

We now offer that as Defendant's Exhibit No. 34, if Your Honor please.

The Master:

Any objection?

Mr. Adams:

We renew our objection.

The Master:

The objection is overruled; the exhibit is admitted.

(Thereupon the instrument was admitted and marked in evidence as Defendants' Exhibit No. 34.)

Q. Mr. Bradford, what is the report on retail sales for Coral Gables as shown by that report?

A. That report shows that in the year 1939 the retail sales in Coral Gables amounted to $4,980,000.00, which, based on the 1940 permanent census—permanent population under the census, amounted to $600.43 per capita.

Q. In the other cities reported on, is that higher or lower?

A. The same twenty-one cities that were picked at random—

The Master: (To Mr. Adams):

Just a minute. Do you want to examine that instrument first?

Mr. Adams:

Yes, sir. (Examining document.) If Your Honor please, we want to add another ground of objection to this Defendants' Exhibit No. 34, that it has not been shown that these retail sales reported here are sales to the citizens of the City of Coral Gables, or whether or not the sales by the—the alleged sales are for a larger area than the City, and that therefore it cannot be compared with other cities, and until it is shown that these statistics relating to other cities show similar situations as exist here, that this is not competent testimony in this case.

The Master:

The document is admitted; the further objection is overruled.

Q. Mr. Bradford, from Exhibit 34, are the retail sales of Coral Gables per capita high or low in comparison with the other cities shown in the exhibit?

A. I have compared the retail sales of Coral Gables with the other twenty cities, which are the same cities that are compared in connection with the filing of income tax

returns for 1939. It was necessary, however, that I delete two of those cities, namely, Dunedin and Vero Beach, because in 1939 the population of those two cities were under 2,500; therefore, they are not reported separately in the Commerce report. Therefore, there are nineteen cities involved, of which Coral Gables is one. The average per capita retail sales of those 19 cities was $520.81, as compared with Coral Gables' $600.43. Of those 19 cities, including Coral Gables, there are only four cities whose per capita retail sales exceed those of Coral Gables.

Q. What is the proximity of Coral Gables to any large town?

A. Do you refer geographically?

Q. Yes.

A. To Miami.

Q. Do you know the approximate distance?

A. I think it is approximately 12 to 15 miles.

Q. Can you state whether or not a smaller town that is within that distance of a larger town loses retail sales to the larger town on account of the more advantageous shopping?

A. I think it is usually accepted that it does.

Q. Now, the other cities or towns which compare favorably with Coral Gables, are any of those near a large city or as near a large city as Coral Gables is?

A. I don't see any city among the list that is as near to another city which is larger, as Coral Gables is to Miami.

Q. And those four cities which compare are in themselves much larger than Coral Gables, are they not?

A. One of those which exceeds Coral Gables is Bradentown. Bradentown has a smaller 1940 population than Coral Gables, having a population of 7,444 against Coral Gables' 8,294.

Q. The Town of Bradentown is not adjacent to any large city with an attractive shopping district, is it?

A. No, sir.

Q. In other words, those other four cities are themselves primary shopping districts?

A. Yes, sir.

Q. Now, Mr. Bradford, have you yourself inspected Coral Gables as to the character of improvements, streets, parkways, and other municipal improvements?

A. Yes, sir.

Q. Are they good or bad?

A. I think they are good.

Q. How do you think they compare with the other twenty-one towns that we have drawn up a comparison with there?

A. Mr. Berry, I can't answer that for each of those twenty-one towns, but the greater portion of those twenty-one towns I feel as though I am quite familiar with, and I can certainly say that in my estimation the character of the improvements, parkways and other municipally owned properties, and the private homes, residences, and the business section of Coral Gables is by far better than you will find in the average of the other twenty cities that are listed.

Q. Now, Mr. Bradford, based upon your study of the City of Coral Gables and the present municipal indebtedness, including the refunding bonds, the unrefunded bonds and the judgments against the City on which there are now madatory levies, would you say that they could or could not pay off that indebtedness over a course of years and if so, what would be the best method to be adopted, in your opinion?

A. In my opinion the City of Coral Gables could pay that indebtedness off, and that the best method of accomplishing that would be to issue bonds for the unrefunded indebtedness of the same character and general kind as the bonds that are now issued as of January 1, 1937; the same type of general obligation bonds.

Q. Could you state whether or not in your opinion if the bonds so to be issued could not be exchanged or used

in payment of the unrefunded indebtedness, they could be sold on the open market? Have you any experience in marketing municipal bonds, and can you make the statement?

Mr. Adams:

We object to the question; the witness is not qualified as a bond sales expert, or as having knowledge of such matters.

Mr. Berry:

Well, I will ask if he is qualified, and what he knows about it.

(The Witness):

A. Mr. Berry, I can make this statement. Over the past ten years my work has thrown me into constant touch with security houses. I am familiar with the trend, the market, rather, and I think I am thoroughly conversant with the type of security that on the market for a given day or a given period of time would be acceptable by those houses, and could be marketed by those houses.

Q. Based upon that experience, would you say that a bond of the type that you have indicated in your previous answer would be salable, if it could not be used in exchange or in payment of the unrefunded indebtedness?

A. I would prefer to put it this way, Mr. Berry. A bond of the type that I have in mind would be a very adequate bond for the exchange, to be exchanged with the creditors of the—the holders of the unrefunded bond debt, and would be very fair to those creditors and to the City. I think, however, that if bonds were to be marketed by the City to obtain cash, which I feel confident could be done, I think that a separate issue could be set up within the ability of the City to pay that could be marketed at par or better.

Q. What would be the issue of bonds required to pay off the unrefunded indebtedness according to the audits and statements of the City which you have observed?

A. The entire indebtedness to July 1, 1941, assuming that the money which has been collected during the present fiscal year were not paid on account of the unrefunded debt, but were to be used for some other purpose, which could be discussed later, the amount of debt to be refunded would be, according to my calculation, $687,-884.23.

Q. How many bonds of the refunding issue are still held unissued by the City of Coral Gables?

A. According to the information I have received from the attorneys for the creditors, there are $321,000. of actual unrefunded bonds, and $146,000 of unrefunded bonds which have been reduced to judgment. On the basis of refunding 50% of the principal of those bonds, that would mean that $233,500. of bonds were held by the City pending the exchange of the unrefunded bonds under the plan involving the issuance of January 1, 1937, bonds, so that deducting the $233,500. of bonds, the payment for which has already been provided for under the plan, would leave $454,384.23 of bonds to be provided for.

Q. In other words, the increase in bonded indebtedness under the plan suggested by you, assuming the cancellation and non-user of the presently outstanding bonds which have not been issued, would be an increase of approximately $450,000.?

A. Now, by increase, Mr. Berry, I don't quite follow you on that term. The bonds outstanding are—already amount to $467,000., so the increase in bonded debt would not be anything like the difference between $233,500. and $687,884.23.

Q. Well, what would be—under your plan, what would be the increase in bonded debt?

A. $220,884.23, which is, I might state, the amount according to my calculations of the interest on the unrefunded bonds to and including June 30, 1941.

The Master:

Mr. Berry, you said the increase; increase over what?

Mr. Berry:

I was just going to ask him that very question.

(The Witness):

A. That is the increase over the bonds that are now outstanding, unrefunded.

Q. Now, Mr. Bradford, if you take the refunding bonds of the City which are outstanding, both issued and unissued, and add to that the mandatory levies and the unrefunded bonds and the interest thereon, would that be a greater or less figure than the indebtedness of the City would be if they refunded according to your plan?

A. I would like to have that question read. (Question read to the witness.) As I understand the question, Mr. Berry, the amount to be issued in that case would be less, because you have included everything that I mentioned and have added thereto the amount of the mandatory levy, and therefore it would be less by the amount of the mandatory levy.

Q. Then when we have used the word "increase" heretofore, it means an increase merely over the proposed reduction of the indebtedness by the City, and not an increase over the presently outstanding obligations of the City if we assume all the obligations to be valid?

A. That's correct.

Mr. Berry:

Does that answer Your Honor's question?

The Master:

I believe so.

Q. If your plan were adopted and bonds issued pursuant thereto, and the unrefunded bonds and the manda-

tory levies were paid and extinguished, would that cause any increase in the tax rate that now exists in Coral Gables to pay principal and interest on all of the bonds that would then be outstanding?

A. No, sir.

Q. Mr. Bradford, have you prepared at our request an exhibit, or proposed exhibit showing the bonds which you suggest be issued, the interest thereon, the interest requirements, the bonds to be retired, the present and anticipated assessed value of Coral Gables, the millage which will be required to service this indebtedness, the amount to be produced by this levy, and assuming from testimony heretofore that the current collections are 80%, with a subsequent collection of 5% additional, showing the work-out of these bonds from 1941 to 1977?

A. Yes, sir.

Mr. Berry:

I will ask that you file that as Defendants' Exhibit 35.

Mr. Adams:

We would like the record to show that the Petitioner reserves its right to except to this tendered exhibit and all the rest of this witness' examination, and we believe we can make motions to strike it in better form and keep the record in better shape if that is done after we study it.

The Master:

I will mark it "filed", Mr. Adams, but with the understanding that it is subject to a motion to strike.

Mr. Adams:

Yes, sir.

(Pursuant to the foregoing, the said instrument was marked and filed in evidence as Defendants' Exhibit No. 35.)

Q. Mr. Bradford, in preparing Exhibit 35 were you assuming that the holders of the unrefunded bonds and the holders of the mandatory levies or judgments would accept new bonds?

A. Yes, sir. I assumed that the holders of unrefunded bonds and the holders of all the judgments existing would accept new bonds.

Q. And on what basis was that assumption?

A. That basis was on the assumption—I should put that this way; that basis was arrived at by reason of discussions had with me by counsel for certain creditors, who indicated to me that they would be willing to accept refunding bonds of such a proposal as this.

Mr. Adams:

If the Court please, we move to strike that testimony of the witness regarding the hearsay report of the willingness of creditors to accept these suggested bonds, and I guess you would call it the Bradford plan shown in Defendants' Exhibit 35, as being incompetent and irrelevant and hearsay.

Mr. Gibson:

The witness isn't testifying the creditors will accept; the witness is simply showing the basis of his plan and why he arrived at—how he arrived at that basis.

Mr. Berry:

I think this, if Your Honor please; if it can admitted now, we can make it competent, and that his assumption is a proper assumption, which we can prove at a later date. This is merely in support of a plan which he sug-

gested that the city can pay, and if Your Honor will accept that, we will come in at a proper time with that showing, and we so notify Your Honor, and I think it makes it admissible at this time.

Mr. Adams:

It is irrelevant in the discussion of this exhibit. This exhibit is, as I understand it, premised upon the servicing of so many outstanding bonds and obligations.

The Master:

The ruling will be reserved on that point.

Mr. Berry:

And we will not argue it any more at this time?

The Master:

You need not argue it any further.

Q. Now, Mr. Bradford, I wish you would take Exhibit 35, and in your own language explain each of the columns, showing what they are, and how you arrived at those amounts and figures, and why you believe it is within the ability of the City to meet the obligations that are therein set out.

A. The first column, entitled "Fiscal Year", of course is clear. That only reflects the fiscal year in which each line relates. The bonds outstanding for the first year, amounting to $454,384.23, is arrived at as follows: From Exhibit 12 of the City, which is a certificate of G. N. Shaw, Clerk and Director of Finance of the City of Coral Gables, there are listed $326,000 principal amount of bonds unrefunded, and $185,516.67 of interest past due. I was informed by counsel for the creditors that $5,000. of those bonds had since June 30, 1940, been exchanged; that would reduce the $326,000. to $321,000. At the time the bonds were refunded, certain interest which is in the

column of "Interest past due", totaling $185,000, odd, would of course be taken out, because in the refunding there were tax participation certificates issued for the accrued interest on those bonds. That reduced the amount of interest past due to $182,636.67. Now, since these interest figures are to June 30, 1940, and since I preferred to make these calculations as of July 1, 1941, I applied the annual interest rate to each particular issue of bonds to determine the amount of additional interest for the year ended June 30, 1941, and that amount I compute to be $18,970.00. The same Exhibit No. 12 shows that the amount of judgments are $159,197.59, and that interest past due on those judgments was $408.78. The annual interest on those judgments extended for the year ended June 30, 1941, would amount to $5,671.19. This totals $687,884.23. Now, as I have testified earlier, it is my understanding that $233,500. of bonds are already provided for in the arrangement which anticipates the issuance of bonds as of January 1, 1937. Therefore, in determining the amount of additional funds to be raised to retire the unrefunded debt, I have deleted $233,500. principal amount, which leaves a balance of $454,384.23. Now, the third column, which is "Interest Rate", is set up on exactly the same basis as the interest on the bonds which are dated January 1, 1937. The "Interest Requirements", which is column four, is merely the result of the application of the interest rate for each particular year against the net amount of bonds outstanding in that particular year. Now, the bonds retired at par, which is column five, reflects the amount of bonds which are anticipated to be retired, assuming that the collections are such as have been set out in this schedule. Column 6, or "Assessed Value Total", is taken from the City's Exhibit No. 27, which shows the anticipated assessed value total over a period of years, to the final liquidation of the January 1, 1937, bonds in the year 1977. Column 7, or "Millage", is the amount of millage which would be required, assuming those assessed value totals to be correct, to pro-

duce a levy which on the assumptions contained in this schedule would produce the amount of money necessary to retire the issue. In Column 9—I beg your pardon—in Column 8, the "Levy", is the result merely of the application of the millage against such assessed value total as is contained in Column 6. Now, in Column 9, because of the fact that the City, over the past three or four years, according to the information I have been able to glean from the exhibits which have been referred to before, that the City has been able to collect approximately 80% of its current collections over the past three or four years. On that basis, I think it is fair to assume that the City should be able to collect not less than 80%. Now, Column 10, which is 5% delinquent collection, I have attempted to set up in as liberal a way as possible to the City, and it assumes that after a levy—I wish to change that—that after a tax roll has become delinquent, that in the period of two years following that, when the City, under the law, has the right to foreclose its unpaid tax liens, it then will collect an additional 5% only, which will make a total ultimate collection of only 85%. Column 11, which is entitled "Total Collection", is merely the result of the addition of Columns 9 and 10. Now, from Column 11, which is total collection, we deduct Column 4, which is interest requirements, and Column 5, which is bonds retired at par, and we have left the figure which appears in each line of Column 12, which is the surplus in that current year. Now, that surplus, or deficit, as the case may be, goes over into Column 13, which we call "Reserve". Now, in the column "reserve" I would like to make this particular comment. You will observe that if the City were to collect only 85% of each curent roll over a period of two years, that is to say, 80% currently, and 5% of the roll which was two years previous, there would be, beginning with the fourth year, a sufficient reserve to take care of any abnormal situation that I think it is reasonable to anticipate, and would make it possible for the City to

fall down in its current collections as much as, in some circumstances, 60 or 65% and still be able to carry out all of the things which are contemplated in this schedule. Now, by following the various years through with the operations of those years, you will observe that the millages range from .7% in 1941-42 to .9% in the final year; 7/10ths of a mill being the lowest millage and 9/10ths of a mill being the highest. The levy for the year 1941-42 would amount to $17,916.94, which is approximately $10,000. less than the levy this year under the mandatory writs. It would seem to me, therefore, that if the City of Coral Gables is able to collect an amount sufficient to service the entire anticipated issue dated January 1, 1937, and in addition thereto can collect on the mandatory writs an amount approximating $27,000. or more, that certainly it would be able to collect a sum of $17,900., for example, in the year 1941-42, as against a sum considerably larger in the current year, and it is on that basis particularly that I believe that the City of Coral Gables would be able to raise the funds necessary to retire this amount of bonds.

Q. Now, Mr. Bradford, the figures in Column 2, the new bonds to be issued, are arrived at, as you have described, from exhibits of the City and from the City's own records?

A. They are arrived at from exhibits of the City and from the records of the City as transmitted to me by attorneys for the creditors.

Q. The interest rate that you have is the identical interest rate on the refunding bonds that are proposed to be issued by the City?

A. That is correct.

Q. You have made no change whatever in that?

A. None at all.

Q. Now, Column 6, on your assessed value total, I understand that you have taken that absolutely without

change from an exhibit prepared by Mr. Shaw and filed in this case?

A. Well, from an exhibit which is filed in this case, Mr. Berry. There is nothing on it to indicate who prepared it, but it is Exhibit 27 of the City.

Q. That's the City's own exhibit, and you are assuming that their own estimate of assessed value is correct, and are making no change in that; is that correct?

A. That is correct.

Q. Now, Mr. Bradford, if these bonds were issued, and the remaining refunding bonds were issued and the indebtedness you have described taken care of, do I understand you to say with the millage you have in Column 7 that that would actually cost the City approximately $10,000. less a year than it is costing at the present time?

A. I can't make that statement, Mr. Berry. I can put it this way, however; that in the year 1941-42, as an example of the City's ability to raise and collect taxes, that the amount that would be required in the year 1941-42 would be approximately $10,000. less than the amount which it has actually raised thus far this year on mandatory levies. I would also like to point this out, Mr. Berry, that in setting up this schedule I have deliberately omitted any application of the funds which have been created during the current fiscal year under the mandatory writs. The funds which might be on hand with the City under such mandatory writs I should imagine, by arrangement with the creditors, could be used either to reduce the debt before bonds were issued, or could be used for the reduction of the amounts to be required to be raised over the next few years.

Q. Have you taken into consideration the accumulated interest on the unissued refunding bonds still in the hands of the City?

A. I have not taken that into consideration at all. That amount would be able to be treated likewise.

Q. Have you taken into consideration the fact that the City has acquired and now holds uncanceled in its general fund various of these refunding bonds?

A. This schedule does not take that into consideration at all, sir.

Q. Mr. Bradford, from your study of the situation of Coral Gables at this time, and your experience as an expert with refunding municipal indebtedness, have you anything now that you would like to suggest of your own motion in regard to this proposal? Is there anything you would like to add to the testimony heretofore given this morning?

A. Nothing specific that I think of, Mr. Berry.

Q. Well, now, from your experience of approximately ten years in the refinancing of cities which were financially involved, which experience, I believe you said, embraced some 94 cities, do you think that the plan which you have outlined here is a desirable and feasible plan, and one which can be carried out by the City without undue burden?

A. I certainly do, sir.

Q. Mr. Bradford, you have had occasion to outline, or make up, or pass upon plans of refinancing of substantially all of these 94 towns you have mentioned, haven't you?

A. Yes, sir.

Q. Does this plan you are now suggesting materially differ from them, or is it in the accepted line of practice with the other towns?

A. I think I am perfectly safe in saying it is in line with the continued practice, Mr. Berry.

Q. From your experience do you consider this is good practice or bad practice, this suggestion you have made?

A. It is good practice.

Mr. Berry:

We will now tender him for cross examination. I believe Your Honor said yesterday we might ask further

questions; I want to confer with counsel and may have some further questions later.

The Master:
Do you gentlemen want to cross examine now?

Mr. Adams:
We would like to reserve the cross examination. The witness' testimony has been a little technical and a little too much for us lawyers to take in as it went along, and we would like to have the record first.

The Master:
It is so ordered.

(Witness excused.)

1118 TOWNSEND WAINWRIGHT was called as a witness on behalf of the objecting creditors, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Berry:
Q. This is Mr. Townsend Wainwright?
A. That's right, sir.
Q. Have you any other initials, or is that your full name?
A. No, sir; that's my full name.
Q. How old are you, Mr. Wainright?
A. I am thirty-five, and nine months and a week.
Q. Where is your office, Mr. Wainwright, and with what firm if any are you connected?
A. My office is at 120 Broadway, New York City. My firm is Wainwright, Ramsey & Lancaster.

Q. And where is your home?

A. New York City.

Q. What is your business, Mr. Wainwright?

A. It is primarily advising municipalities on problems of business principally connected with their outstanding debts.

Q. Does that bring you in contact with refunding or refinancing plans of cities who claim inability to meet their debts as they mature?

A. At times, yes.

Q. Does it bring you in contact with the municipal bond markets throughout the United States so that you are conversant with what bonds would sell for from time to time?

A. Yes.

Q. How long have you been in the business of advising municipalities on their finances?

A. Since December of 1933.

Q. And have you had your own firm since that date?

A. No, sir.

Q. Who were you with prior to the organization of your present firm?

A. My present firm was organized in November of 1939. Prior to that for—going back to about April of 1934, I was with Norman S. Taber & Company, and starting approximately January 1, 1932, I was with an organization known as Municipal Securities service, which is a credit reporting agency. That is an organization that reported on the finances of municipalities throughout the United States to people interested in bonds.

Q. What character of business did Taber & Company do?

A. The same work which I have been doing in Wainwright, Ramsey & Lancaster. That is, acting as consultant to municipalities and working out problems connected with their debts.

Q. I will ask you whether or not Taber & Company set up a plan for the refinancing of the State of Tennessee debt?

A. Yes, we did.

Q. I will ask you whether or not that plan is successful and is in use today or not?

A. Yes, sir, it is.

Q. Did you have any personal connection with that?

A. Yes, sir, I worked—I spent a great many hours on the plan.

Q. What was your education prior to entering work, Mr. Wainwright?

A. Graduate of Cornell University.

Q. Did you take any post-graduate work after that?

A. No, sir.

Q. And what was your first employment after you left Cornell?

A. I was with the Guaranty Company of New York immediately following graduation from college, and I was with them until I went with the Municipal Securities Service, which was, to the best of my recollection, in December of '31. I resigned, I think, in November, but as of the end of the year '31, from Guaranty.

Q. Mr. Wainwright, approximately, if you can give us any idea, how many municipalities have you served in the capacity of a financial expert, including municipalities, states or other taxing units?

A. Frankly, I don't know the number, but it is upwards of seventy.

Q. Can you give us the names of some of the more important ones that you have served?

A. Yes, sir, I can.

Q. Do it, please.

A. You have given the name of the State of Tennessee, which was a job that involved approximately $130,000,000. of refinancing. The City of Newark, New Jersey, which involved approximately $25,500,000.; the City of Jersey

City, which involved on one operation $15,500,000. and on a recent one just completed, $8,000,000. The City of Yonkers, New York, approximately $12,000,000. The City of Tampa, Florida, $3,600,000. The City of New Brunswick, New Jersey, $7,000,000. Is that enough, or would you like more?

Q. Did you have anything to do with Westchester County?

A. Yes, although the work there didn't involve financing or loans, either temporary or permanent loans for the county itself. That work involved, primarily, straightening out some of the important cities and subdivisions. The cities, for 1933, and the towns in the county, were collecting county taxes for the county, and under the law were required to turn over out of their annual collections 100% of the county levy, and they had there the same experience that was general throughout the country of falling off of taxes throughout the country for many years, and the municipal agencies weren't able to do it, and they couldn't do it off of borrowed money, and their credits had been dried up, and the county was forced into serious difficulties because they had large maturities of bonds coming due in December of '33, and they were unable to get from their subdivisions, the towns and the cities, enough money to meet them, so that in order to provide for that amount of money it was necessary first to straighten out the underlying subdivisions of the county, and that was the work which we tackled in '33 when I first went into this business.

Q. Other than Westchester, the towns and the State that you have mentioned, did they involve refinancing proposals with the issuance of new bonds?

A. In a great majority of instances, yes.

Q. Did that also involve the levying of a tax to meet the interest and maturities on those bonds?

A. Yes, sir.

Q. In the experience that you have had, where you did set up the new refinancing structure, were those plans of refinancing successful?

A. Yes, sir, in every case.

Q. When you are advising a municipality on a refinancing, state the extent and character of the information you require, or the study you make of that municipality.

A. Well, I better give that in a summary, I think. It is a very extensive subject. The principal information I am concerned with at the beginning of a job of refinancing is the income and expense of the municipality. In other words, what is the nature of its cash revenues. And I require that in considerable detail, and the amount of money which they are required to pay in order to properly operate the community on the expenditure side. I am interested then, following that, in the amount of revenue that I believe can be raised and continued to be raised in order to meet their debts. Following that, I am interested in the structure of their debt as it exists, and then my principal job is to determine how that debt, if it cannot be met as it then matures, can be arranged so that it can be met promptly under a new form; in other words, the effectual payment of the entire debt over the future is the job I am primarily interested in. Now, there is a great deal of collateral information that is outside of what I have just touched on. I don't know how much you want me to go into that.

Q. I think that is sufficient for our purposes. Now, the basis of all income for a taxing district is the assessed value of the property, is it not?

A. Generally speaking, it is the basis of a large percentage of the income. That is, the bulk of the income. That I will qualify, to say that the other receipts of a community may vary greatly, especially when you get into a community—rather, a unit such as a state. They

may or may not have a property tax, and in most states the property tax is only a small portion of their revenue, and their revenue is largely of another nature.

Q. But if you are dealing with a community which is primarily a residential section, or taxing unit, and not a business taxing unit, then the revenue is largely derived from the assessed valuation of the residential property, is it not?

A. Well, it is derived from the taxable value of the property. I prefer to look at it that way, rather than the assessed value.

Q. Well, you are making a distinction between the taxable value and assessed value. How do you arrive at that when you are making your study? Do you make an independent appraisal of the property to determine that, or do you accept the City's appraisal?

A. I generally accept the appraisal of the city. Of course, cities in this country have a different method of appraising property, and they have different ratios at which they assess. Some cities assess theoretically at full 100% taxable value, and some cities at a lower ratio, and where I have a job of refinancing to do, I generally make a check of my own, entirely independent of what any assessor or assessing body or board tells me, which is not exhaustive or extensive in most cases, but if it, on the basis of a spot check, appears to coincide with their assessment—

Q. (Interrupting) Describe the nature of that check you are speaking about.

A. Well, I would say that in the larger communities it is first going to local mortgage or banking institutions and getting opinions from the real estate officials of those institutions as to the nature of assessments on properties which they are interested in by and large throughout the city, and then I generally go around myself and just from experience and observation look at properties in the community and place whatever value I think they may or may

not be worth, and then go back and check them against the roll. Unless I am way off, I don't pay much attention to that, except I do it for my own satisfaction.

Q. Well, if that check is made in that way and doesn't show any wide variances, do you ordinarily accept it?

A. Yes, I do.

Q. Is that a satisfactory method of checking it, from your experience?

A. Yes, it is.

Q. Now, what about the levy that is made, Mr. Wainwright? Do you check the amount of the levy as to the ability of the city to meet it?

A. Yes.

Q. How do you do that?

A. Principally by determining the speed of collection of that levy and the extent of the delinquencies over a period of years.

Q. Now, from the experience that you have had and here detailed, are you in your opinion competent to pass on a refinancing plan for the City of Coral Gables with the view of how many bonds they may have outstanding on which they could pay principal and interest?

A. Yes, sir, I believe I can.

Mr. Berry:

We tender him for cross examination.

The Master:

Is there any cross, gentlemen?

Mr. Adams:

We waive cross examination on his qualifications.

(At this time a recess was taken from 12:00 noon to 1:30 P. M., at which time the witness was returned to the witness stand and the examination resumed):

By Mr. Gibson:

Q. Mr. Wainwright, in your practice as financial advisor regarding cities' fiscal affairs, have you been employed by bondholders—is your firm employed by bondholders, banking institutions or the cities themselves?

A. The cities themselves are the ones, whatever municipal entity the body happens to be.

Q. You have never worked for—you work for them entirely; you don't make a practice of working for institutions or bondholders' committees?

A. I won't say a hundred per cent. There have been one or two occasions when I have made purely a survey for a group who were interested, or an individual who may be interested in the financial condition of a community, but not from the standpoint of a refinancing operation. In other words, a factual survey only.

Mr. Gibson:

That's all.

Direct Examination (Continued).

By Mr. Berry:

Q. Mr. Wainwright, at my request and that of others, have you made an examination of the affairs of Coral Gables?

A. I have, yes.

Q. Will you state the extent of that examination and your sources of information?

A. The extent of my examination started with the exhibits that have been introduced in this proceeding up to today, that was supplied to me by counsel here for the—by Mr. Berry, for the American Bank.

The Master:

Will you have him identify those exhibits, Mr. Berry, more extensively?

Q. Are those the Petitioner's exhibits 1 to 40, which I hand you, the ones you examined?

A. Yes, sir, these are the exhibits that I have studied, or copies of them.

Mr. Berry:

We again make the same offer as we made in the case of Mr. Bradford. These are copies of the exhibits filed in this cause by the City of Coral Gables, and if there is any question that these are correct copies, we will offer them for examination, or have the witness examine the originals and inspect them.

Mr. Adams:

That's all right.

Q. Now, were there any audits submitted to you of the City?

A. Yes; there was a copy of the 1940 audit. That is, for the fiscal year ended June 30, 1940, And photostatic copies of several previous years, going back to the year 1935-36.

Mr. Berry:

We have here the audit report of June 30, 1940.

The Master:

Is that an exhibit in the case?

Mr. Berry:

Yes, I think it is. These are all copies.

Mr. Adams:

No, sir; it is not.

Mr. Berry:

We have here the audits, '35 to '40, which the witness has examined, and these are the copies of the official

audits of the City which they have furnished us. We offer them here now for identification, if the City cares to examine them, as correct copies, or we will have the witness examine the originals to show the source of information. Is there any objection?

Mr. Adams:
That's all right.

Q. In determining the ability of a municipality or taxing district to pay its indebtedness, what investigation do you make and what are the factors that enter into your consideration to determine that?

A. In the answer to that question I would repeat a good deal of the answers that I gave in the examination as to my qualifications as a witness. I will repeat them very briefly, if that is satisfactory.

Q. If you will.

A. A great many factors enter into the question of debt of a municipality. Primarily, the main factors are the taxable value of the realty within the community, the nature and kind of property that that represents, the revenue which it can reasonably be expected to produce, I attempt to measure; the revenue which it has produced, as a matter, generally speaking, of the financial reports of the community in the shape of an audit or a report of the chief financial officer, and that must then be related to the amount of the outstanding debt, the interest on that debt, and its composition, the life of it, the amount which matures annually, and the amount it costs to service that debt, in other words, together with the operations of the community from the standpoint of current finances. In all of that, which is very broad, there are naturally an examination of a great many details of the finances of the community.

Q. Taking those up in more detail now, what investigation of the taxable values of Coral Gables did you make?

A. I examined the exhibits that have been introduced which indicates an assessed valuation here of aproximately $25,000,000; I examined some schedules that have not yet been introduced into evidence that have been prepared by gentlemen who I understand will testify at a later date and who are still preparing the exhibits and schedules which they will use in their testimony, which indicated all sales of property for cash in recent years over a wide group of properties throughout the area which comprises Coral Gables, and in which relation there was made to the assessed value of the realty. I myself have taken a drive in a car around the community and looked at the houses that are here, and the condition of the streets, the buildings and general appearances of the community, and I have taken certain specific properties which I felt that I could more or less estimate the value within reasonable limits, and have then compared those two figures which were procured for me as to the amount for which they were assessed.

Q. Now, what about the revenue which the City of Coral Gables is receiving? Did you check on that?

A. I checked on that primarily from the audited reports here of the years—for the past few years, including the year ended June 30, 1940, and I assumed, naturally, that those figures are correct. I also looked again at some of the exhibits of the City which contained information in that respect, with relation to taxes, particularly.

Q. Now, did you examine the audits to determine the outstanding bonded indebtedness of Coral Gables, including the refunded bonds that are outstanding as well as the unrefunded bonds and coupons that are outstanding, and the judgments which have been rendered against the City which are now being paid by the mandatory levies?

A. Yes, I have.

Q. State whether or not in your opinion the City has the ability to pay that indebtedness as it matures?

A. Yes, it has.

Q. State in your opinion what would be the best way and manner of paying that indebtedness, including if necessary a refunding or issuance of new bonds which could either be used in satisfaction of the unrefunded indebtedness, both bonds and coupons and judgments, or by a sale of such bonds, using the cash for that purpose.

A. Well, now, in asking the question, the best manner, I think naturally from the standpoint of the nature of the work in which I have been in for a number of years that you mean the best manner for all parties concerned. In other words, my conception of the answer that you are attempting to give in that question, or trying to give me in asking that question, is the best result from not only the standpoint of the City of Coral Gables, but also the holders of its obligations and its creditors. In other words, as I see it from my point of view, the interests of both depend upon each other, and they are very much interrelated. There is no question in my mind but what at this date the City of Coral Gables could refinance its obligations that are not included in the refunding bonds of the issue of January 1, 1937, and could procure an amount of cash sufficient to retire those that are not yet due. It could do so well within the legal interest rates. Now, in saying what is the best from the standpoint of the City and the creditors, that's a question which would take a very extensive answer, too. There is a medium between—in the situation that has to be measured by the nature of the community and its paying ability, but there is no question in my mind but what that the money could be raised to pay off the creditors in full at a reasonable rate of interest.

Q. Is it or not a fact that there is a very well-established municipal bond market in the United States, and that you can take the ability to pay of a municipality and figure on what rate of interest those bonds should bear very definitely, at the trend of the market at the time?

A. Yes, there is. The credit of a community with as many bonds outstanding as there are in this case in the City of Coral Gables is measurably within very narrow limits.

Q. What in your opinion would be the interest rate that a bond issued by Coral Gables should bear?

A. That would, of course, depend very materially upon the nature of the bond, its maturity, the length of average life of the issue if it were a single issue. In view of the approximate present market of Coral Gables, in other words, the existing market today, I believe that an issue could be set up in an amount sufficient to pay off the past due bonds and judgments with interest thereon at approximately 4% rate, and that issue, I might go further when I say that, and say that that would be an issue of such maturities spread out over a period of years that would not add to the present tax burden of the community.

The Master:

What do you mean by past due bonds?

A. The bonds that have been matured and have not been paid, and that are outstanding, of old issues.

The Master:

And unrefunded?

A. And unrefunded.

The Master:

All right.

Q. Are you or not including in that bonds which are outstanding and unrefunded but which have not yet matured?

A. Yes; that's the same thing.

Q. Are you familiar with the terms of the refunding bonds that are now outstanding of Coral Gables?

A. Yes, sir, I am.

Q. Is 4% more or less than the interest that is provided in those bonds over a period?

A. It is less than the average rate. In other words, the bond which I would say could be set up within the ability of the community to meet could be sold at a lower average interest cost to the community than those which are now outstanding, because a bond issue could be set up which could have terms different from those of the now outstanding issue. That is, the principal issue of January 1, 1937.

Q. If another issue of bonds, having the same dates, maturities, rates of interest, and so forth, was set up to take care of the unrefunded bonds, interest and judgments, what would be the amount of bonds that would have to be issued to pay out Coral Gables, including in that, also, the unissued bonds of the present refunding issue?

A. The bonds and interest, did you say?

Q. Yes.

A. Of the unrefunded bonds, as I understand it, from the figures I have looked at at the present time, and the present amount of the judgments, together with interest, would amount to approximately $687,000. to July 1st, next. Of that amount there is some bonds which are not yet due. In other words, that includes all of the outstanding unrefunded bonds; that amount of $687,000 includes the amount of unrefunded bonds that are past due and still to mature.

Q. Then if the available bonds of the present refunding issue were used, that would leave approximately $454,000. of bonds to be issued; is that correct?

A. It would be—because the—well, that figure would be arrived at, I assume, by deducting the amount of the unissued 1937 refunding bonds from the whole amount; in other words, the City is now providing the debt service on some $233,500., I believe it is, of unrefunded bonds, authorized under the January 1, 1937, issue.

Mr. Clarke:

Are you referring to bonds that have been authorized but have not been actually issued?

A. Bonds authorized under the Resolutions 269 and 289, I believe are the numbers, that have not been issued to date, and for which a levy and collection is being made and serviced.

By Mr. Berry:

Q. Have you seen the schedule prepared by Mr. Bradford which has been filed in this cause as Exhibit 35?

A. Yes, sir, I have.

Q. State whether or not you agree with Mr. Bradford's conclusions as expressed in that exhibit.

A. Well, when you ask me conclusions, could you be a little more explicit in what you mean by conclusions?

Q. In Column 1 he sets up the various fiscal years; in Column 2 he sets up the additional bonds to be issued which he calls outstanding bonds, and in Column 3 he sets up an interest rate which is the same interest rate of the present refunding bonds. After that he shows the interest requirements; then he shows the assessed value total, which is the same one projected by the City on Exhibit 22, and using their figures; and then shows the millage necessary, based on that, to pay off these bonds at maturity with interest. Do you agree that that can be done with that millage?

A. It could be done with the consent of the outstanding —the holders of the outstanding unrefunded bonds and judgments. In other words, as I understand this schedule, it provides a means of payment of those obligations, and I would say that it would be well within the ability of Coral Gables to support this schedule of payments that would be required if such a plan were put into operation and consummated.

Q. If that plan were put in, and those bonds issued, and the unrefunded bonds, coupons and judgments were re-

tired, and Coral Gables undertook to pay off the present refunding issue, including the unissued bonds, and the additional bonds mentioned on Schedule 35, but were no longer required to levy on the mandatory writs, would that cost Coral Gables more or less than it is costing at the present time?

A. Less; considerably less in relation to the amount that is being levied.

Q. State whether or not in your opinion, based on the experience which you have had and detailed here, Coral Gables is or is not able to pay off its present indebtedness, as reflected by its audits?

A. I believe that Coral Gables is definitely able to pay off its present indebtedness as reflected by its audits. By that I mean that it is able in the sense that it can support the schedule provided by the 1937 refunding plan and can raise enough money on the basis of its present credit to pay all other obligations in cash.

Mr. Berry:
That's all.

Direct Examination.

By Mr. Gibson:

Q. Mr. Wainwright, you made the statement that an issue of bonds could be sold at the average interest—at the rate of 4%, in a sufficient amount to retire its present unrefunded indebtedness. What I want to find out now is just exactly how strongly you feel about that. Would it be a difficult thing to do, or would it be something that could readily be done? Would the City get par for the bonds, or have to take a discount, or would they get a premium?

A. Well, I feel this way about it. Perhaps I had better go into a little more detail as to my reasoning on that. An issue could be set up, a serial bond issue, with bonds

maturing annually, on which the total annual amount of principal and interest would be approximately $36,000. That issue would run from, starting with the maturity in the year following the year of issue, and would be entirely matured in 30 years; in less than 30—about 37 years; it would have the average life of approximately 23 years, which is the thing I have in mind. In other words, if you set up an annuity scheduled issue of serial bonds, a level total debt service with increasing principal payments and decreasing interest payments such as these FHA mortgages which, as you have seen—I have seen and I suppose you gentlemen have; I have seen many of those bond issues set up that way; it could be sold at a price which could produce an interest cost of approximately 4% and would yield par to the City for the bonds in this market. I mean, if such an issue were validated today and ready for sale, it could be sold at par. The $36,000. of annual debt service on such an issue would not require any increase in the taxes now being levied and collected, because the audits—last year's shows that $34,000. alone is being collected and paid to the holders of the mandatory writs, and at the present time $7,000. is being collected and reserved for the $233,500. authorized but unissued bonds on which the interest is $7,000. In other words, that would be a total of approximately $41,000. that is now being raised in cash by the City of Coral Gables. They have demonstrated their ability to do that, and the service on such an issue as I suggest, purely as an example of what could be done in this market, would be $5,000. less than that amount, and that would retire the entire $688,000, in round figures, of bonds and interest, to July 1, 1941.

Q. Well, that's very good as far as it goes, but I want to show the Court the readiness with which such a transaction could be done. In other words this;—

Mr. Adams:

May we caution counsel against leading his expert witness and putting the answer into his mouth? We object to the form of the question he has started into.

Mr. Gibson:

Do you mind me completing the question?

Mr. Adams:

If you can get it straightened out and it is not a leading question.

Q. Would it be a difficult thing to do, or, if it were known that the City was in the market for such money, would you have bond houses flocking down here trying to get it?

Mr. Adams:

We object to it as a leading question.

The Master:

The objection is overruled.

Mr. Gibson:

I covered both sides of it.

A. The way to answer that question would be to say that if such an issue as I have suggested were offered for public sale with bids to be received here and now, that you would have a great many interested purchasers here with a certified check with 2% of the principal amount, which I assume would be the procedure required, with a bid of approximately par for such an issue bearing interest at the rate of 4%.

Q. In other words, the purchase of such an issue at this time would be a highly desirable piece of business for a responsible bond house or financial house to carry?

A. It is my opinion that bond houses interested in the underwriting of such securities as this would be here as willing buyers to such an issue as I have suggested could be sold. An issue of that nature, in my opinion, could be readily sold under the terms I have suggested. That would be a straight line as a total debt service issue, as a series bond, running from now until 1977, bearing a 4% rate, with annual amounts of principal to be met each year, with no callable provision.

Q. You say that with the view that the purchaser will have full knowledge of the financial condition of the City, of Coral Gables as it stands today, and the purpose for which the money is to be used?

A. Yes. In a sale of bonds the underwriter or prospective underwriter of an issue has, through the advertisement of sale, a full knowledge of the purpose, because it must be stated, if an issue is to be sold, and before he would bid on any issue I know that certainly the great majority of them advise themselves of the financial condition of the community, through such public records as the audits that are here on the table, and information that is obtained in all sorts of ways.

Q. And your opinion such an issue would be readily salable is based on the fact that the financial condition of the City as it exists is such as to justify such a ready sale?

A. In the present market.

Q. Mr. Wainwright, will you tell the Court your conclusions as to the type and character of the City of Coral Gables as compared with the general type and character of other communities of like size throughout the United States and in Florida?

A. The type and character of the community, I think, is very evident on its face, and going through the community and looking at its taxable property, the nature and type and construction of its buildings and houses, to me Coral Gables is considerably—I think that's a conservative statement—above the average community in the

wealth of its average citizen. In other words, it is very evident in comparison, without looking at figures, that the residents of this city are well-to-do people, above the average in means. In other words, the resources of the taxpayers here I would certainly judge to be above those of what I would consider the average community of its size.

Q. Is the average type of property—improved property in the City of Coral Gables above or below the average type of improved property in an ordinary city?

A. Oh, the average is, I would say, very considerably above that of the ordinary residential community. Coral Gables is, of course, primarily a residential community as opposed to average communities, which might have more industrial aspects.

Q. Do you know of any other cities in the United States that you would say are of as high class in general type of property and class of improvements as the City of Coral Gables?

A. Well, from what I have seen of the United States, generally speaking I would say there would be very few. In other words, I think within its population group it certainly ranks very near the top on that question. There may be some. They don't come to my mind, off-hand.

Mr. Gibson:

We tender him for cross examination.

Mr. Adams:

We reserve the right for cross examination and to make motions to strike portions of the testimony.

The Master:

It is so ordered.

Mr. Gibson:

Just a minute. I would like to continue with Mr. Wainwright while he is here.

By Mr. Gibson:

Q. Mr. Wainwright, comparing Mr. Bradford's plan with the cash plan you suggest, please explain to the Court which of the two plans would be the most desirable from the City's viewpoint, and why.

A. Well, the plan which I suggested is one possible of consummation, if you wish to call it a plan. It would require the City of Coral Gables to raise $36,000. a year from now until 1977 to retire such an issue. The plan that Mr. Bradford has put forth starts out with approximately one-third of that amount, or $13,000. in the next few years, and then goes up with the anticipated growth of this community as set forth in the schedules introduced in the testimony taken previously. From the standpoint of the community today this plan of Mr. Bradford would be infinitely easier on the taxpayers today and for some time, and throughout if this growth occurs. The plan I suggested, if you term it a plan, is simply one which is to indicate my opinion of something that is within the ability of the community today and which would be fair to the taxpayers of this community. In other words, it is a fair way of meeting its debts. The interest on Mr. Bradford's plan over the life of it would probably be greater, but presumably the resources in later years would be sufficient to take care of it. In other words, the weight of the payments increases just as in the case of January 1, 1937 issue, which was set up to contemplate the growth—in contemplation of a growth in Coral Gables over the life of the issue. A 4% serial bond, which I believe could be sold, an annual payment of $36,000. would, over the life of the bond issue, cost the City less money than in the schedule set forth here.

Q. In other words, the plan that you suggest would cost the community less money, but would be a little heavier burden, but even though it is within the city's ability to take care of it.

A. Yes. The City has demonstrated the ability to take care of it. Their own collection figures indicate that, I think, very clearly, from the figures which I gave previously. If I were a taxpayer of Coral Gables, I would infintely prefer Mr. Bradford's plan, and if such a plan could be consummated, and I believe it could, it would be a fair plan, certainly from the standpoint of the City.

Q. Now, Mr. Wainwright, I understand that the plan you propose can be consummated without increasing the City's indebtedness whatever, and that the same is true of Mr. Bradford's plan, but assuming that it would require from one to two mills additional taxes for debt service in order to carry out the plan, do you think that superimposition of that additional mill or two would be a sufficiently great increase of tax burden as to stultify the tax collections, or to affect them adversely over the present percentages?

A. You mean if through the issuance of a new debt to retire the existing debt it would require an increase of two mills over the present millage which is being levied, would that stultify tax collections? Is that your question?

Q. Yes, sir.

A. I would say no, it would not, because I have seen many illustrations where in normal times an increase in a similar ratio in millage has been made on a community of such a character as this for one cause or another, and collections have continued as good, or in many cases in an even better percentage rate. I am not trying to say what the ceiling of tax paying ability is in Coral Gables, but I would say certainly it would not be reached with the addition of two mills with the existing millage.

Mr. Gibson:

That's all as far as we are concerned, at this time, of course reserving the right to place Mr. Wainwright on the stand for further direct testimony.

Mr. Adams:

We make the same reservation as to making motions to strike and the right to cross examine at a later date.

The Master:

It is so ordered.

(Witness excused.)

1145 JOHN H. MANLEY was called as a witness on behalf of the objecting creditors, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Gibson:

Q. State your name, please.

A. John H. Manley.

Q. What is your business or profession?

A. I am engaged in the business of investment counsel.

Q. With what firm are you connected?

A. I am employed by Economic Analysts, Inc.

Q. Your address?

A. 40 Wall Street.

Q. New York City?

A. New York City.

Q. What is your capacity with that company?

A. Vice-President.

Q. Please state your educational qualifications and your experience in this line of work.

A. Well, I have an A. B. degree from Dartmouth College, a Masters degree from the same college at Tuck School of Administration and Finance. I have also done graduate work at the New York University. And so far as business experience is concerned, I have been with the present firm for the past seven years constantly, in my present capacity, as an analyst, buyer and seller of municipal bonds.

Q. Are you familiar with the bond markets, the viewpoints of the various bond houses when they are looking at a bond issue with the idea of possibly selling it or marketing it?

A. Yes, sir.

Q. And the condition of the markets with relationship to the ability to dispose or the relationship of the markets' ability to absorb bonds of different types?

A. Yes, sir. I don't think a day goes by that I talk to less than ten different dealers specializing in municipal bonds.

Q. Is it the business of your firm to review and analyze the financial structure of cities and municipalities?

A. Yes, sir. That is the primary purpose of the work, to determine the soundness of the bonds that they issue or have outstanding.

Q. Is it part of your work to analyze refunding plans to determine whether or not these cities' ability to pay can support them, or whether or not the refunding plans represent a fair representation on this part of the ability of the city to pay?

A. You are referring to a refunding of a community in financial difficulty?

Q. Yes, sir.

A. Unfortunately, yes.

Q. Can you give us the aggregate amount of the accounts that your firm handles and the percentage thereof that is in municipal securities?

A. I couldn't give it exactly because the funds involved are all separate funds of individuals or institutions, and there is no point whatsoever in ever combining them, because we don't operate as a trust company. However, I would say, roughly, as an estimate, based on my knowledge of the accounts that we have, I would say roughly that $100,000,000. is under our supervision, of which probably a minimum of $25,000,000. would be in the municipal class. By municipal I mean state and local bond issues.

Q. Your experience with these defaulted municipal corporations, is that confined to Florida, or is that in various other parts of the United States, also?

A. No, sir; it is confined to the parts of the country in cases in which our clients have been embarrassed and caught with bad bonds, and we assist them in getting out, all over the country.

Q. In other words, you experience in reviewing refunding plans of defaulted communities is national in scope?

A. Yes.

Mr. Gibson:

That's all.

Mr. Adams:

I have just a few questions at this time, Your Honor.

Cross Examination.

By Mr. Adams:

Q. How many defaulted municipal bond situations have you studied in the State of Florida, Mr. Manley?

A. I don't believe I could give you an exact answer to that, because it would take some time, and an examination of our files, to state it exactly, but—

Q. Just state the cities you know of in your own individual work as a member of that organization.

A. Well, there has been, aside from Coral Gables, the City of Miami, Sanford, the Palm Beach County Board of Public Instruction, I believe is the correct title of it, in one or two districts there; there have been the cities of Hollywood and Fort Lauderdale, and also the Broward County Port Authority; there have been others; they don't seem to come to mind as rapidly as I wish.

Mr. Gibson:

May I refresh his memory?

Q. What has been your individual connection with these problems of those taxing units that you mentioned?

A. Well, my capacity in that work is the same as it is in the other—in the case of sound and current bonds, and that is to analyze financial information which is obtained from all possible sources to determine whether or not it is to the best interest of the client who owns the bonds to agree to a certain procedure or to attempt to obtain some different treatment, or, in other words, to recommend to him what he do to get out of a bad situation as best he can.

Q. Do you make a personal study of those records yourself, or do you merely review the results of men in your organization?

A. I don't think your question is exactly clear.

Mr. Adams:

Read it. (Question read by the reporter.)

A. By records, do you mean the financial information which is gathered together?

Q. Yes, sir.

A. Oh, I make a personal examination of that; that is my work.

Q. What proportion of the $25,000,000. of securities in the municipal class that you say your firm has advised,

about, as I understand you, how much of that have you worked on yourself, personally?

A. All of it.

Q. All of it?

A. Yes, sir.

Q. Is that the amount, or the approximate amount of the holdings of your clients that have asked your advice regarding municipal securities?

A. Yes. As I said before, that is a very rough figure, because those accounts have never been totaled.

Q. Are you employed now or have you been employed by any bondholders' committees?

A. No, sir.

Mr. Adams:

That's all.

(Witness excused.)

(At this time there was an off-the-record discussion had between counsel for the respective parties, following which the following statement was dictated into the record):

Mr. Gibson:

Mr. Gibson, attorney for Fiduciary Council, Inc., was interrogated by Mr. Redfearn, as representing the City, as to whether or not Fiduciary Council, Inc. waived its special issues by participating in the examination of witnesses, and Mr. Gibson stated that he did not, whereupon the Master said he did not so construe that Mr. Gibson or any of the other defendants were waiving any rights by participating in the case in main.

Mr. Berry:

We have some more questions to ask of Mr. Manley, and would like to have him returned to the stand at this time.

1151 JOHN H. MANLEY was thereupon recalled as a witness on behalf of the objecting creditors, and being still under oath, further testified as follows:

Direct Examination (Resumed).

By Mr. Berry:

Q. Mr. Manley, have you at my request and that of other counsel in the case made an examination or study of the situation existing in Coral Gables?

A. Yes, sir, I have.

Q. When did you do that?

A. That's a rather peculiar question. The answer, of course, is in the past two weeks I have reviewed all of the facts concerning the City of Coral Gables. I have been engaged in the studies of Coral Gables a number of times in past years.

Q. What particular information did you have before you when you were making this last study in the last several weeks?

A. I had all the exhibits which had been presented in this case to date. I have had various audits of the City's accounts.

The Master:

Just a minute. Let him identify those exhibits, Mr. Berry.

Q. Mr. Manley, we have here copies of Plaintiff's Exhibits 1 to 40. I will ask you if they are the exhibits to which you refer (exhibiting same to witness).

A. These are the exhibits; yes, sir.

Q. I have here copies of the City's audits for the years 1935 through the fiscal year 1940. Are they the audits to which you refer?

A. Yes, sir.

Mr. Berry:

We again, with this witness, tender these for confirmation that they are true copies of what they purport to be, and as I understand it, the City admits that, reserving the right if any error should appear to at that time challenge the paper, otherwise they will stand as the copies of the exhibits that have been filed and copies of the official audits of the City.

Mr. Adams:

That's satisfactory.

Mr. Berry:

It is the same ruling in all three cases, as I understand.

The Master:

That's the ruling.

Q. Mr. Manley, have you been through the City of Coral Gables to observe its physical appearance?

A. Yes, sir, I have traveled all through it, I think, on nearly every street.

Q. Well, is it as good as the average, better, or worse than comparable towns?

A. I was very favorably impressed with the town. I think it is far above the average in my experience.

Mr. Redfearn:

When did he say he traveled through it?

Mr. Berry:

A number of times, he said.

Q. Mr. Manley, you are familiar with the present indebtedness of Coral Gables, and by that I am not referring to current accounts for services which they are rendering, but I am referring primarily to the refunding bonds,

to the unrefunded bonds, those which are matured and those which have not matured, the coupons and the judgments against the City?

A. Yes, sir.

Q. Are you familiar, from your examination of the audits, of the indebtedness of the kind I am now speaking about?

A. Yes, sir.

Q. On what part of that indebtedness, according to the audits, is the City now paying interest and sinking fund?

A. The total indebtedness, as I recall, is approximately Four and a Half Million Dollars. Of that, roughly Three Million-Eight is in the form of refunding bonds issued in 1937, and approximately $150,000. is in the form of judgments, and a little over 500 is in the form of unrefunded bonds and accumulated interest, if my recollection is correct.

Q. Now, at the present time the audit shows that they are paying interest and sinking fund on the refunded bonds which are outstanding?

A. Yes, sir.

Q. The audits further reflect that on the judgments, by reason of mandatory writs, they are paying interest and the retirement fund each year?

A. Yes, sir.

Q. Do the audits show they are paying anything at all on the unrefunded bonds and the coupons?

A. The audits don't indicate any such payments.

Q. In the event the judgments against the City could be converted into bonds of the same kind and character, the same original date, the same due date, and the same interest rate, and the judgments could be discharged as a result of that, and the unrefunded bonds, either by exchange or payment, could be gotten out of the way, leaving just new bonds for that, what effect would that have upon the millages to be levied to take care of the refunding

bonds now outstanding and the new bonds to be issued for that purpose?

A. That's a somewhat complicated operation. Perhaps I had better re-state it to make sure we have it clear. The assumption is that all the unrefunded bonds now outstanding be refunded into new bonds of the same kind, meaning maturity and coupon rate, as the now outstanding refunding bonds, that the outstanding judgments be replaced by bonds of the same type, what would the effect be on the tax rate?

Q. Yes. You can assume for a fact, or in that, that the mandatory writs would be relieved on the payment of the judgments, and that could be used otherwise. Now, would that increase the millage now being levied by Coral Gables, or decrease it?

A. I believe it can be demonstrated that this could be carried out with a very slight decrease in the total debt service tax millage.

Q. From your experience with the finances of municipal corporations, and from what you know of Coral Gables, state whether or not in your opinion Coral Gables has the ability to pay such an issue of bonds as we are proposing? That is, the presently outstanding refunding bonds and the new bonds we have just discussed. State whether or not in your opinion they have the ability to pay the principal when due, and the interest currently.

A. In my opinion they have that ability. The unrefunded bonds and judgments represent, I believe, about 15% of the aggregate indebtedness of the community; an increase of 15% I think would be so small as to be of limited significance.

Q. If we assume that exchanges cannot be effected of the new bonds that we are discussing now for the unrefunded bonds and judgments, but payment would have to be made in cash, could the City raise that amount of cash by an issue of bonds to be sold, in your opinion, at this time, and your familiarity with the bond market?

A. In the light of present conditions in the bond market and general economic conditions, I don't think that there is a reasonable doubt that the City of Coral Gables could sell a bond issue in the amount sufficient to retire those unrefunded amounts in cash.

Q. What sort of bond would you advise to be issued to be sold to the best advantage of the City at this time?

A. To the best advantage of the City?

Q. Yes. If they were raising cash for this thing, what sort of a bond would you advise them to issue if you were advising them in regard to that?

A. Personally, I would not advise them to sell a serial issue. I would advise a term issue with a 4% coupon rate of perhaps 35 years maturity, a long maturity, which would keep the debt—the annual retirements at a relatively low level during the life of the bonds. Issuance of bonds over such an extended period is justified in the light of the record of the City, the rapid growth that has taken place in the City, and the expectation in the gradual increase in its paying capacity as the years go by.

Q. Mr. Manley, did you see the schedule prepared by Mr. Bradford which has been filed in this case as Defendants' Exhibit No. 35?

A. This schedule has been before me while I sat here.

Q. Did you see it before you came here?

A. Yes, sir, I have seen it before.

Q. Have you been over that in any way and analyzed it?

A. I have been over it very carefully, yes, sir.

Q. If we assume that the assessed values in Column 6 of this exhibit are correct, and that, for your information, the assessed values there are the same as appear in the Plaintiff's Exhibit No. 22, and they were prepared by the City; and assuming that to be correct, would the millages on this exhibit be sufficient to pay interest on and retire the bonds that are set up in Column 2?

A. You mean, is this millage recorded here, based on these assessed valuations recorded here, sufficient to retire these bonds?

Q. Yes.

A. Yes, sir; that is the purpose of the table.

Q. Now, if we assume that instead of issuing the approximately $230,000. of unissued refunding bonds that the City now has of the 1937 issue, if they were canceled, and this $454,384.23 issue was increased by that amount, would that make any difference at all as to the amount the City would have to pay?

A. As I recall from the audits, the City is now providing interest on that portion of the bonds authorized by the 1937 refunding which have not been issued. In other words, the existing debt service levy under the 1937 plan includes provision for that authorized but unissued portion of the 1937 refunding debt. In other words, to cancel that debt and to replace it with a debt of similar size, of exactly the same coupon rate and maturity, would involve no change in millage requirements.

Mr. Berry:

That's all.

Direct Examination.

By Mr. Gibson:

Q. Now, Mr. Manley, if we assume that it would require an extra mill or an extra two mills tax levy on the part of the City to support Mr. Bradford's plan, or to support a 4% issue sale bond, would the additional burden of the additional one or two mills be, in your opinion, sufficiently great to stultify tax collections or to materially affect the welfare of the City?

A. In my opinion it would not. For example, an increase in the tax millage by two mills, if my arithmetic is correct, involves an increase of $2.00 per Thousand Dol-

lars for each Thousand Dollars of assessed valuation, and extending it to a $5,000. house, it involves, of course, only a matter of $10.00 in the annual tax bill, and to a $10,000. home, only a matter of $20.00. Now, just as a practical matter, considering the normal income of an individual living in such a home, a Five or a Ten Thousand Dollar home, I can't conceive of the imposition of an additional burden of this moderate size causing any difficulty with respect to the collection of taxes, the rate of collection, or, for that matter, the future development of the City. There is a certain limit beyond which taxes cannot be increased, but certainly in the case of Coral Gables, two mills does not exceed that limit—two mills above the existing rate.

Mr. Gibson:
I think for the present that will be all the direct testimony from Mr. Manley, reserving the right to recall him on re-direct.

The Master:
That reservation is understood.

Mr. Gibson:
We tender him now for cross examination.

Mr. Adams:
We reserve the right of cross examination and the right to make motions to strike.

The Master:
It is so ordered.

(Witness excused.)

1160 ROY HOLLIS was recalled as a witness on behalf of the objecting creditors, and being still under oath, testified as follows:

Direct Examination.

By Mr. Lea:

Q. If Your Honor please, we have one more map which we wish to introduce in evidence, and I will ask Mr. Hollis to identify this map that I now hand him.

A. That is the map, and the shaded portion represents certificates owned by the Coral Gables Development Company which are now foreclosable. The other map, I might explain, represents all certificates originally bought by the Company; these are the ones now foreclosable.

Q. In other words, Mr. Hollis, this map shows the 1939 taxes which are—from the 1939 tax roll—the 1939 delinquent tax roll representing the 1938 taxes delinquent on the same properties which were previously tax certificates, or which were previously sold to the Coral Gables Development Company; is that correct?

A. That's right.

Q. And where did you get the figures from which you made the block-in on that map?

A. From the City's records.

Q. And that map represents the City's records, as I understand?

A. Yes.

Mr. Lea:

I would like to tender that as Defendants' Exhibit No. 36. Now, let me explain, that is not all delinquent taxes, but only those owned by the Coral Gables Development Company; just on the lands which they had previously sold certificates to that company alone. There is a lot more delinquent in that year, I suppose.

Mr. Adams:
You mean this represents the remainder?

Mr. Lea:
No; that represents the certificates the City could have foreclosed on last year but has not foreclosed on yet.

(Map above offered was marked and admitted as Defendants' Exhibit No. 36.)

Mr. Adams:
Let me ask it a little different way.

By Mr. Adams:
Q. In coloring this map, you started with the lots upon which the Coral Gables Development Company was sold tax sale certificates in the sale to them.
A. That's right.
Q. And out of those lots you show in blue on this map the lots as to which the City holds a tax sale certificate issued in 1939; that would be on 1938 taxes.

Mr. Clarke:
That is not what he said, Mr. Adams.

Mr. Adams:
Well, he talked about 1939, and I want to get it straight.

(The Witness):
A. I can put it this way. These lots do not include the lots on which settlement has been made since 1936, when the Coral Gables Development Company bought these certificates.
Q. And it does include all tax sales certificates held by the City against lots for years subsequent to 1936?
A. No; the other map did that.

Mr. Lea:

That map is a map showing the 1938 delinquent taxes on the same properties that you previously sold the tax sales certificates to the Coral Gables Development Company.

Mr. Adams:

That just what I asked him just now, and he couldn't answer it. Now, go back and read my second question there again. (First question and answer thereto and second question propounded to the witness by Mr. Adams were all read by the Reporter; and in response to the second question referred to, the witness answered):

A. Yes.

By Mr. Lea:

Q. Will you explain to the Court just how you made up the map and how you took it from the City's books?

The Master:

He has done that.

A. Well, my records contained all the tax certificates sold to the Coral Gables Development Company; then, in producing this map I deleted from those records all settlements which were made on those lots, and the ones that are left are now certificates held by the City which are foreclosable.

Mr. Carson:

You mean the ones that are left are the certificates which are held by the City?

Mr. Adams:

Let him say what years.

Mr. Carson:
'37 and '38.

A. That is right.

Mr. Carson:
That's all.

Mr. Haycock:
Mr. Hollis, what records did you check or observe to determine upon what lands the Coral Gables Development Company still holds tax certificates?

A. That was a process of elimination. The first records included all certificates purchased by the Coral Gables Development Company, and the records of the City showing settlements on certain of these lands eliminated those certain properties and left those shown on the map.

Mr. Haycock:
You didn't use, then, the official tax certificate records in the office of the Clerk of the Circuit Court showing the outstanding certificates on these lands?

Mr. Carson:
What do you mean, Circuit Court? Those are city taxes.

Mr. Haycock:
They are filed in the office of the Clerk of the Circuit Court.

Mr. Carson:
Yes, but they are also filed downstairs. There is a copy of the official record downstairs; they have it in the book downstairs.

Mr. Haycock:
I'm just asking him to answer the question.

(The Witness):
A. I used the City's records.

Mr. Lea:
Then that map, Mr. Hollis, represents the 1938 certificates, the ones that became due June, 1938, and still in the hands of the City?
A. Yes.

Mr. Lea:
That's all.

(Witness excused.)

(Thereupon, at 3:15 P. M. the hearing was adjourned until the following day at 1:30 P. M., the 26th day of June, 1941, at which time the following proceedings were had:)

1164 JOHN C. DONEHOO was called as a witness on behalf of the objecting creditors, and having been previously sworn, and being still under oath, further testified as follows:

Direct Examination.

By Mr. Berry:
Q. You have been sworn and have testified before?
A. I have testified previously for the City.

Mr. Adams:
That's right; you testified as our witness.

The Master:

Is he here now on cross examination, or as your witness, Mr. Berry?

Mr. Berry:

No, he is our witness.

Q. This is Mr.—what is your full name?

A. John C. Donehoo.

Q. Mr. John C. Donehoo?

A. Yes, sir.

Q. You have heretofore testified in this case?

A. Yes, I have.

Q I believe at that time you qualified as an expert on appraisals, and that that was your principal business?

A. Yes, sir, particularly as applied to taxation.

Q. And are you as good now as you were then as an expert?

A. Well, I have been employed since that time.

(Discussion off the record between counsel.)

Mr. Berry:

Let the record show that the City concedes the qualifications of Mr. Donehoo.

Q. Mr. Donehoo, at our request have you been through Coral Gables, as well as at other times?

A. I have.

Q. Have you made a study of the values which are placed upon the properties in Coral Gables for the purpose of taxation by the tax assessor, as approved by the governing body?

A. I have.

Q. Have you ever worked in connection with the City in the making of appraisals of the City of Coral Gables?

A. Only in so far as it reflects a total value, the present tax roll.

Q. Have you, however, taken certain individual pieces of property or blocks of property and compared the tax assessment with what you think is the true appraisal for taxes?

A. Yes, sir, I have, with sales, and I assume that the sales reflect the true value of the property.

Q. Now, how many sales, over what period of time, have you inspected and have you available to show those matters?

A. I have here a list of 105 sales made in 1940 and 41, with one or two exceptions, which are noted on the face of it having been made in 1939, and the 1940 assessed value, the sale price and the ratio of the assessed value to the sale price, the description of the property as given, the block and the section.

Q. Now, are the sales that you are reflecting there the result of recorded deeds taken off of the official records of Dade County?

A. Yes, sir.

Q. And are the tax assessments which you have reflected there the official assessments taken from the records of Coral Gables?

A. Yes, sir.

Q. Tell us the result of the sales to the appraised value.

A. I may have omitted stating that these sales are all on vacant land. The total sale price of this compilation is $196,350.00; the assessed value in 1940 is $143,089.00. The ratio of the sales price to the assessed value is 72.87.

Q. I believe, Mr. Donehoo, you are not attempting to appraise improvements upon property, but only vacant property?

A. In this exhibit.

Q. In that exhibit.

A. Yes, sir.

Q. Now, will you give us the result of your study of Coral Gables as to whether the assessments are high, low or fair as compared with the real value of that?

A. Are you referring to vacant land, or assessments overall?

Q. I am referring to vacant lands only, at this time.

A. Well, I believe that in so far as this exhibit is concerned, that the assessment of vacant land is low.

Q. To what extent would you say that it was low?

A. You mean in dollars and cents?

Q. In percentage. The ratio of the assessment to the real value.

A. Well, the percentage shows that it is low by 27.13%.

Q. Now, Mr. Donehoo, have you checked on the improved residence portion of Coral Gables?

A. I have.

Q. Whether they are rich or poor.

A. No. In making the appraisal, no, because it is not possible for the appraisor to know the individual situation of each individual. As a matter of fact, he doesn't know the individual, but over-all, that's taken into consideration in the characteristics of the City.

Q. Well, now, describe the characteristics of the City of Coral Gables with a view of what elements go into the value of the property as you are appraising it.

A. Well, in the first place, by comparison with other Florida cities which are comparable, it has a very low ratio of colored population to white population; I believe about 6%, according to the 1930 census. The ratio of colored population to white population in 1940, since it has not been released, or if it has I haven't obtained a copy of it, and don't know. By comparison, West Palm Beach has a ratio of colored to white of 34%, and Sanford has a ratio of 49%. In addition to that, Coral Gables' population is of a much higher type than the average population of those cities and others as well, in Florida. It offers inducements as a residential community or area not of-

fered by any other residential community in Florida or other community, in my opinion, and likely offers inducements as a place to live that are as good or perhaps better than most of the residential communities in the United States. As a matter of fact, I rate it up very near the top, either first or second, as a place to reside. Those particular factors enter into it. The ratio of income tax returns per 1,000 of population is higher than these other cities I have mentioned and a good many others in Florida. The condition of its streets, its foliage, landscaping, the facilities it offers, all contribute to the establishment of values.

Mr. Berry:

Mr. Donehoo, I did not ask you to file the exhibit which you had there, a while ago, and which I will now ask that you file as Defendants' Exhibit 37.

Mr. Adams:

We reserve the right to move to strike it and to cross examine.

The Master:

It is so ordered.

(Instrument marked as Defendants' Exhibit No. 37.)

Q. Mr. Donehoo, if the assessment of Coral Gables was adjusted according to your ideas of what the real assessed value should be, what in dollars and cents would be added to the present tax assessment rolls?

A. Well, I can answer that a little differently than you ask it. I believe that approximately a Million and a Half Dollars, or probably in excess of a Million and a Half Dollars can be added to those areas which I believe are low.

Q. Does that include both vacant property and business property?

A. Yes, sir.

Q. To see whether that is high or low?

A. I have.

Q. And what is your conclusion on that?

A. I believe that the improved residential portion of the City is assessed at approximately 99-plus per cent.

Q. And that is about as close as is humanly possible, isn't it?

A. Too close.

Q. Now, what have you to say of the business part of the City of Coral Gables?

A. I am convinced that the business section is under-assessed.

Q. Could you give an idea to what extent you think it is under-assessed?

A. It would be purely an estimate, but I believe it will run between 15 and 20 per cent.

Mr. Haycock:

Of value, or under?

A. Under-assessed by 15 to 20 per cent.

Q. In making your appraisals for this purpose, are you taking into account the ability of the citizens of Coral Gables to pay, or the land as to what it will sell for, primarily?

A. I don't believe I understand the connection between the ability to pay. Your question was, in making these appraisals am I taking into consideration the ability of the people to pay?

Q. And if that amount were added, would the assessment of Coral Gables for tax purposes be in accord with your ideas of what it should be?

A. No, sir. I think a more thorough revision than that would be needed.

Q. But do I understand you to mean that a Million and a Half is a minimum of what should be added?

A. Well, a Million and a Half can be added on the areas that I previously testified to as being low in my opinion.

Q. From your experience in assessing taxes and observing the collection of them, what effect would it have on the tax collections of Coral Gables to add that much to the tax roll?

A. I don't know what effect it might have on the collection. It would—if it were added to the tax roll and the millage remained stationary, it would act to reduce the tax bills on the remaining property which had not been changed, somewhat; naturally, by increasing those areas which perhaps are low by a Million and a Half, you automatically reduce the tax bill of the other taxpayers by an equivalent amount of taxes that is raised by a Million and a Half additional.

Q. The point I'm getting at, though, is the collectibility of the taxes after the roll has been increased by that amount. Can you base your opinion from your experience as to that?

A. I don't believe it would affect the present collectibility or present rate of collectibility, whatever it may be.

Q. Suppose at the present rate of assessment the rate of taxation was raised two or three mills; would that, in your opinion, affect the collectibility of taxes?

Mr. Adams:

We object to that question; he is not qualified, at present at least, to express an opinion on that. He has qualified himself merely as an expert on tax assessment values.

Mr. Berry:

Then we will ask him some additional qualifying questions, if Your Honor please.

Q. Mr. Donehoo, what is your present work and business, and what position do you hold, if any?

A. I hold no positions. I am in business for myself, and at the present time I am operating a housing survey in the City of St. Petersburg, and re-assessing the City of Vero Beach.

Q. How many cities in Florida have you either re-assessed or helped to re-assess in connection with others.

A. Well, I will have to enumerate them. There is St. Petersburg, Coral Gables, West Palm Beach, Miami, Tampa, are the ones in which I have had active participation—and Coral Gables—in which I have had active participation in the assessment or re-assessment thereof. There are other cities in which I have made various limited surveys; a number of those.

Q. In making your re-assessment, did you take into account whether or not such re-assessment would affect the collectibility of taxes if you raised the assessment?

A. No, sir.

Q. Have you observed in those instances where the assessments were raised, what the collectibility of taxes was thereafter?

A. Well, I made some personal observations in a number of instances, but it depends on what happens to the tax rate, also, in an increase of assessments.

Q. Well, where the millage or tax assessment remain the same as before the assessment was increased, what was the usual effect on that, as you determined?

A. Well, in West Palm Beach—

Mr. Adams:

We object to that, if the Court please; the witness has testified and has reiterated here now that his profession and his work is in assessment values of land, and that he has not bothered about the burden of taxation or the tax collectibility in his studies.

Mr. Berry:

I have just asked him if he has made that study, and he says he has, and I am asking him what the result of it was, now.

The Master:

Now read the question; (question read). It seems to me very doubtful, Mr. Berry, whether the witness has qualified himself to answer that question.

Q. Well, Mr. Donehoo, will you state more in detail what observations you have personally made in connection with your work of tax assessing as to the effect of raising an assessment on the collectibility of taxes, both of when the rate was raised and when the rate remained stationary?

Mr. Adams:

That is not a qualifying question; that's asking for the result.

The Master:

No, I think that's a proper question.

A. I have made no particular specific studies along that line; however, I have made observations of what happened in those situations.

Q. To what extent have you made observations?

A. Merely by a study of the increase or decrease in the ratio of tax collection from year to year, taking into consideration what had happened to the assessment roll from year to year.

Q. Have you made enough of those observations that you can now generalize and tell what the trend is as the result of that?

A. Well, the trend is—

Mr. Adams:
Wait a minute. We object—

The Master:
Wait a minute; just answer his question "yes" or "no".

Mr. Berry:
I asked if he had made a sufficient number of observations that from that he can now tell what the general trend was toward and affecting collectibility.

(The Witness):
A. I have.
Q. Will you please state what your observations are?

Mr. Adams:
We object; we don't believe the witness has qualified himself, Your Honor.

The Master:
Well, he may answer the question.

A. My observation is that where the assessment has been a fair and equitable one, it has resulted in an increase in the collectibility of taxes.
Q. You have used the expression "fair and equitable" roll, and I will ask if in any of the instances when you determined a fair and equitable roll the tax assessment was raised—the total?
A. Are you speaking of Florida, now?
Q. Yes, sir.
A. Or of other places? I can't recall an instance in Florida where the assessment has been increased in those—
Q. Can you recall any such instance in any other place than Florida?

A. Of course, there would have to be a time limitation put on the question. I have only been in the state eleven years, or ten years.

Q. Have you done any work outside of Florida during the past eleven years?

A. Yes, sir, very much.

Q. Well, in the last several years have you had the experience of adjusting the tax roll with the result that the total assessment value was increased, and if you have, can you tell the effect on the collections in those instances?

A. I can't tell the effect, because in finishing a job, as a job in the east or the south, and when it is finished it is usually a year to eighteen months before any reflection is evident in the collectibility, and I have made no effort to find out if there was an increase or decrease in the collectibility of taxes. In other words, when I'm finished with a job, I paid no attention to what happened afterwards in the matter of the collection of taxes.

Q. What experience have you had in the refunding of indebtedness of municipalities, Mr. Donehoo?

A. I have made studies to determine the level of value in refunding operations.

Q. In connection with what towns in Florida have you done that?

A. Winter Park, Coral Gables, West Palm Beach Plant City, Lakeland, St. Petersburg. I don't recall any others.

Q. Did the studies and recommendations that you made involve the adjusting of the tax rolls and the rate of taxation?

A. No, sir.

Q. To what extent did they go?

A. My studies were merely for one purpose, to determine the then existing level of the existing rolls to true value.

Mr. Berry:
That's all.

Direct Examination.

By Mr. Gibson:

Q. Mr. Donehoo, has any part of your work involved the setting up of refunding plans?

A. No, sir.

Q. Has any part of your work been in connection with refunding plans?

A. Only to the extent that it was necessary to find out the true level of values by sampling process.

Q. Has any part of your work involved the determining of the tax-paying ability of the taxpayers of the city for the purpose of to be used as a basis for the refunding plan?

A. Not specifically required, other than observations as to what might be indicated to be true, but no precise determination.

Mr. Gibson:
That's all.

Direct Examination (Resumed).

By Mr. Berry:

Q. Mr. Donehoo, I am reading to you from the minutes of a meeting of the Board of Equalization of Coral Gables held July 24, 1939, appearing on Page 181 of the Minute Book. It reads as follows: "The board having previously studied the matter ordered that all improved property, 1936 and prior, be reduced from a standpoint of depreciation and obsolescence on the basis of 1935 and prior, 16%; 1936, 12%; 1937, 8%; 1938, 4%". I will ask you whether or not from your standpoint as an expert appraisor that is a proper and corrcet way of making reductions for depreciation and obsolescence?

A. I don't believe it is.

Q. Well, why not? Explain it.

A. Because it doesn't take into consideration too many factors which affect the application of depreciation. It should be based on an actual examination of the structure at the time of applying depreciation, because a blanket application fails to measure the fact that one building may have been excellently maintained over a period of years, and another building may have been allowed to deteriorate considerably, so therefore the application of the same rate of depreciation would create an unequal situation there between the buildings.

Q. Do you mean by that it would result in an inequitable assessment?

A. Yes, sir.

Q. Now, what do you say about the rate of 4% per annum for depreciation against buildings in cities? Is that high or low?

A. Taken by and large, it is high.

Q. Do you know what the officially approved rate for the depreciation of buildings is?

A. It varies according to the type of construction. High grade masonry construction, I think, in the Bureau—according to the Bureau of Internal Revenue, is 2%, generally, on high grade masonry; from one and a half to two per cent, I will say, and two and a half to three per cent. on residences, and perhaps four per cent. on very cheap frame construction.

Q. Now, Mr. Donehoo, when you last worked with the officials of Coral Gables on assessments, or any time prior thereto, did you or not call their attention to your views of what the true values of the property you say is underassessed in the Gables, was?

A. Yes, sir. In 1939 I called their attention to the situation as I enumerated earlier there, in which I thought the land values were low, and including the business area.

Q. Does, or not, the failure to increase those values make an inequitable assessment, in your opinion?

A. I believe it does.

Q. Mr. Donehoo, from your familiarity with Coral Gables, are there any of the very cheap class of structures here that would be depreciated in the 4% bracket, or any appreciable number of them?

A. No appreciable number. There might be a few, maybe a thousand, perhaps, down in the industrial area around the railroad, some negro houses.

Q. Were you consulted about the reduction in the tax roll by the City of Coral Gables?

A. Which reduction?

Q. The one I read to you from the minutes.

A. On the buildings?

Q. Yes, sir.

A. I was requested by Mr. Shaw to give him my opinion on the matter, and I did.

Q. Was that opinion the same as you have expressed here?

A. Yes, sir.

Mr. Berry:

That's all.

Direct Examination (Resumed).

By Mr. Gibson:

Q. Mr. Donehoo, is it usual to start taking that depreciation immediately after construction of a building, or is it usual or is it an approved practice to wait for a period of years before you start taking that depreciation?

A. Well, many cities, as a matter of practice, allow no depreciation for the first five years, and others do; and some don't allow any until the taxpayer hollers so loud they have to give it to him.

Q. Mr. Donehoo, have you assisted or participated in the formulation of refunding plans?

A. No, sir.

Q. In any manner at all?

A. Other than making those valuations and level surveys, which are a part of a composition, of course, because it has a bearing on the determination, but I have not participated in drawing up the plan, if that's what you mean.

Mr. Gibson:

That's all.

Direct Examination.

By Mr. Lea:

Q. Did you make a study of the City of Sanford at my request, or at Mr. Wright's request?

A. Yes, sir, I did.

Mr. Adams:

I would like to have the witness state what kind of a study.

A. A study to determine the approximate level of the assessed values to true values.

Q. Do you recall your findings in that study?

A. Approximately. The ratio was approximately 93% —the assessment ratio.

Q. Do you recall what proportion of the population of Sanford is negro?

A. 49%.

Q. Do you know what the purpose of that study was made for at our request?

Mr. Adams:

We object to the witness answering the purpose of a study.

The Master:
Let him answer the question.

A. Well, I don't know, but I assume that it was for the purpose of—

Mr. Adams:
We object to him answering his assumption, Your Honor.

The Master:
If you don't know, don't answer.
A. Well, I don't know.

The Master:
All right.

Q. Let me ask this question. Mr. Donehoo, at the time you made that survey had the City of Sanford completely consummated its refunding?
A. I believe not.
Q. Do you know whether or not it has at the present time?
A. I believe it has.
Q. Do you recall from your study what the millage was in Sanford at the time you made your study?

Mr. Adams:
We object as it is secondary evidence, and the best evidence is available to prove such matters.

Q. Let me qualify the question. Is a study of the millage a part of your routine check-up of the city?
A. Yes, it is.
Q. Did you check up on the millage of the City of Sanford at the time you made your study?
A. I did.

Mr. Adams:
We object.

The Master:
The objection is overruled.

Q. What was that millage, Mr. Donehoo?
A. I will have to refer to the study; I have it with me.
Q. All right, sir; I wish you would.
A. Fifteen mills for debt service and 15 mills for operation; a total of 30 mills.
Q. Did you in that report determine the percentage of collections from your report and your survey?
A. I don't believe I did, without reading it (indicating report). (After examining instrument) No, sir, it doesn't.

Mr. Lea:
All right; that's all.

Direct Examination (Resumed).

By Mr. Gibson:
Q. Mr. Donehoo, in the course of your business and in pursuance of your studies do you become familiar and does it come within your knowledge of the various tax rates—what is a reasonable tax rate, what's a high tax rate, what's a low tax rate? I'm speaking of the effective tax rates.
A. Yes, sir.
Q. Do you recall the tax levy in the City of West Palm Beach—the over-all tax rate of the City of West Palm Beach?

Mr. Adams:
If Your Honor please, we again object to the witness testifying to tax rates. The tax rates appear in the official

records of the city, and that's the best evidence of it, and we object to this hearsay testimony.

Mr. Gibson:

The effective tax rates do not appear in the city records.

Mr. Lea:

That's a different thing than the millage, and I think the witness can explain what it is.

The Master:

The objection is overruled; let him explain.

A. An effective tax rate is a determination of a level of assessed value to true value, and taking the true value and dividing it into the total taxes raised on real estate to determine what is the effective rate paid by taxpayers per thousand of population. I mean, per thousand of value.

Q. Do you know the millage that's being assessed in the City of West Palm Beach?

A. I don't know it, but I have it here in my folder.

Q. That's millage, now, Mr. Donehoo.

A. Yes, sir, I understand that (examining records). 34 mills.

Q. Now, Mr. Donehoo, would you say that the Cities of Sarasota and the cities of West Palm Beach and the cities of Coral Gables, generally speaking, within a small reasonable variation, are on about the same tax assessment base, or is that not the case?

A. I can definitely state that that's true in so far as Coral Gables and West Palm Beach are concerned.

Q. Well, now, is Sanford more—

A. Of Sanford? Before you asked about Sarasota.

Q. Excuse me. I meant Sanford. In other words, so far as a basis of levying taxes, Sanford, West Palm Beach

and Coral Gables are on about the same basis? No material difference?

A. No material difference in the level of assessed values.

Q. That's correct. Now, is West Palm Beach a higher class type of property or a lower class type of property than Coral Gables?

A. Well, West Palm Beach doesn't offer the inducements as a place to live that Coral Gables offers.

Q. I'm talking about the physical property itself; the assessment of the property.

A. The characteristics of the property?

Q. The characteristics of the property itself.

A. It is of a much higher grade in Coral Gables than it is generally in West Palm Beach.

Q. And what is the situation as regards to Sanford?

A. Very much better in Coral Gables than in Sanford.

Q. What is the tax paying ability, from your observation, of the taxpayers of the City of Coral Gables as against West Palm Beach, and as against Sanford?

Mr. Adams:

We object to the question. The witness has not qualified himself as an expert on tax paying ability; he has qualified himself as a tax assessor.

Mr. Lea:

I think that's a very important question that the Court would want to hear, and if he is qualified to answer, I think he should be allowed to answer. In his original qualifications he stated that the taxpaying ability in a town was a very great consideration.

Mr. Adams:

I beg counsel's pardon, but as I understood the witness to state, he did not bother with the ability of the owners of the property to pay taxes; that he looked to the value

of the property to fix the valuation, and not the ability to pay. I think he is going far afield from the qualification of the witness. I'd like to have the record read on that point.

The Master.

Well, it will be easier to qualify the witness again.

Q. Mr. Donehoo, when you make your study of a city and arrive at the final aggregate assessment roll, do you take into consideration, and do you study, and do you become familiar with the taxpaying ability of the people in that city as a class?

A. Yes.

Q. Are you familiar with the class of taxpayers in the City of Coral Gables?

A. I am.

Q. Are you familiar with the class of taxpayers in the City of West Palm Beach?

A. I am.

Q. Which of the two is the highest?

A. Coral Gables.

Q. Well, now, when I use the word "highest" I mean to convey "who appears to have the greater ability to pay".

A. Coral Gables.

Q. To what extent greater would you say that the City of Coral Gables is higher than the City of West Palm Beach, generally speaking? I mean, much greater, or slightly greater, or materially greater, or what?

A. If I had to express it in terms of percentage, I would say it would run between 10 and 15%.

Q. Now, consider the same as to the City of Sanford. In other words, compare the taxpaying ability of the people of Coral Gables as a whole to the taxpaying ability of the people of Sanford as a whole.

A. It would probably run 40%.

Q. Forty per cent. greater?

A. Yes.

Q. Now, are you familiar with the taxpaying ability of the people of Sarasota?

A. No, I am not.

Q. Now, can you tell us the percentage of collections in the City of Coral Gables that you have become familiar within your work with the City of Coral Gables and your study of the City of Coral Gables?

A. No, I don't know what the percentage of collections are.

Q. Can you tell us what the percentage of tax collections are in the City of West Palm Beach, through your work in that city?

A. I can only estimate it. I believe I know what it is, but I am not positive.

Q. I don't want you to estimate it, but I don't mean to confine you to a particular decimal point.

A. I mean, I can't confine it down to an exact figure.

Q. Yes, sir.

A. It is between 85% and 90%; that's as close as I can get.

Q. Now, can you tell us what the same percentage is in the City of Sanford?

A. No, I can't.

Q. You can't tell us that?

A. No, sir.

Q. Now, Mr. Donehoo, as I understand the situation, —and correct me if I'm wrong—the assessment base of Coral Gables, West Palm Beach and Sanford is about the same?

A. I believe they are approximately the same.

Q. The millage levied against that same base in Sanford is 30, and West Palm Beach it is 34, and Coral Gables it is—did you testify?

A. I haven't testified to the millage of Coral Gables.

Mr. Lea:

Do you know what it is?

A. Yes, I do.

By Mr. Gibson:

Q. What is it?

A. Twenty-two mills.

Q. And the ability of Sanford is the lowest, and West Palm Beach is next, and Coral Gables is the highest?

A. I believe that's true.

Q. Now, from those factors can you state whether or not the City of Coral Gables can stand an extra burden of taxation without stultifying its taxes, and from your experience in that regard?

A. I think it sure can to the extent that an increase might be brought about by increasing the land values that are low, whatever that sum may be.

Q. In other words—well, it could at least come up to the level of the other two towns, could it not, in dollar tax burden?

A. I would think so, yes.

Q. Now, have you made a study of the operations costs of the respective cities of Sanford, West Palm Beach and Coral Gables?

A. Only as it might be reflected in the tax levy for operation.

Q. Do you know what that relationship is to the total millage?

A. I have it here. I do not have it on Sanford.—I may have it in the study; yes; 15 and 15; 15 mills for each.

Q. Yes; I believe you testified to that; 15 mills for operation and 15 for debts.

A. Yes.

Q. And in West Palm Beach it is what?

A. Twenty for operation and 14 for debt service.

Q. And in Coral Gables it is what?

A. Well, I have that here, too; 14 for operation and 8 for debt service.

Q. Did you refresh your memory to see if that was correct about Coral Gables?

A. Yes, sir; 14 and 8.

Mr. Gibson:

That's all.

Direct Examination (Resumed).

By Mr. Lea:

Q. Mr. Donehoo, in your studies of these various cities did you have occasion to determine the various factors making up the operations of the city? That is, what the city furnished its citizens for the money levied for operations?

A. No precise study of what they did or didn't do, but just generally what might be observed in the way of services.

Q. That's what I mean, yes. Now, from your observation, would you say that the City of Coral Gables by virtue of having a high operating levy furnishes more service to its citizens than these other communities?

A. I believe it does.

Q. What's that?

A. I believe that it does.

Mr. Lea:

That's all.

Mr. Gibson:

We submit Mr. Donehoo for cross examination, reserving the right for re-direct.

Mr. Adams:

We have only one question, Mr. Donehoo, for the purpose of studying your testimony.

Cross Examination.

By Mr. Adams:

Q. You stated, as I understood it, that a Million and a Half could be added to the areas believed low?

A. Which I believed to be low.

Q. Which you believed to be low. Will you define those areas?

A. Yes, sir. The entire business district on Ponce de Leon from—well, where the hotel is up there where the bend of Ponce de Leon is.

Q. From the Antilla?

A. From the Antilla, down to and possibly three or four blocks below Coral Way, and Coral Way, from the City Hall up to the city limits up toward Miami. That's one district. Another district is that area south and west of the Miami Biltmore Hotel. I believe that is C. C. No. 4, or 5; I'm speaking of this area in here (indicating on map).

Mr. Shaw:

That's No. 4.

A. (Continuing.) And C. C. No. 4, which is the district east of the Miami Biltmore Golf Course.

Mr. Lea:

May I interrupt and state that C. C. 4 and 5 appear on a map already in the record.

A. (Continuing.) This is the area I have reference to, (indicating); I have defined the business district.

Mr. Adams:

Let it show that he is referring to map filed as Defendants' Exhibit 31.

A. I have defined the business district to your satisfaction?

Mr. Adams:

Yes.

A. And this area here (indicating).

Mr. Adams:

That can't go into the record (referring to indication made by witness).

A. C. C. No. 4, generally speaking, and this area here.

Mr. Adams:

Well, how is that identified?

A. That's 3 and 6; and this area here along the waterway, including the yacht basin from Coco Plum to Miller Road, and from the yacht basin back to Alphonso Avenue, (indicating on map).

Mr. Adams:

Alhambra Circle, isn't it?

Mr. Berry:

Alhambra Circle.

A. At this intersecting circle, whatever it is.

Mr. Gibson:

Yes; Alphonso Circle.

A. (Continuing.) Those are the four areas I had reference to.

Mr. Adams:

Do you have reference to the improved properties in those areas, or the vacant lands?

A. Vacant lands.

Mr. Adams:

That's all. We want to reserve further cross examination, and the right to make motions to strike.

The Master:

It is so ordered.

(Witness excused).

1193 ALBERT ROBERTS, JR. was called as a witness on behalf of the objecting creditors, and being first duly sworn, testified as follows:

Direct Examination.

By Mr Berry:

Q. Please state your name.

A. Albert Roberts, Jr.

Q. How old are you, Mr. Roberts?

A. Thirty-eight.

Q. Where do you live?

A. St. Petersburg, Florida.

Q. What is your business?

A. Dealer in securities, specializing in Florida municipals.

Q. What is your firm?

A. The firm name is Roberts-Willingham & Company.

Q. How long have you been connected with that firm?

A. The firm was organized in September, 1940.

Q. And who were you with prior to that time?

A. Prior to that time, with the exception of a year from 1934 I was connected with Ed. C. Wright & Company.

Q. In what capacity were you employed with Ed. C. Wright & Co.? What was your position?

A. Well, when I resigned the Ed. C. Wright & Co. I was Vice-President of the company.

Q. Before you went with Ed. C. Wright & Company, what were you doing, Mr. Roberts?

A. Most of my work had been in trust banking and municipal bonds from the time I got out of school in 1925.

Q. Have you ever been connected with the American National Bank?

A. Yes, sir.

Q. For how long?

A. I was with the American National Bank from 1925 until 1929. I resigned on account of ill health and subsequently came to Florida.

Q. Now, during that time you say that you have specialized in bonds?

A. Municipal bonds.

Q. Municipal bonds?

A. Yes, sir.

Q. And at the present time are you specializing in Florida municipal bonds?

A. Yes, sir.

Q. What business was Ed. C. Wright & Co. in?

A. Florida municipal bonds.

Q. In connection with your work, state what examination you had occasion to make of municipalities and what studies you are accustomed to make in the buying of bonds and selling of bonds.

A. Well, I might state that my work with Ed. C. Wright & Co. was principally in refund activity. I handled the refunding of Alachua County; I handled the refunding of Sebring; I handled the refunding of the City of Mana-

tee, the City of Auburndale, and served the company somewhat in that capacity following through refunding plans and work of that nature in the state.

Q. Do you actively participate in the preparation of the refunding plans?

A. Yes.

Q. In preparing those refunding plans, what investigation if any did you make as to the paying ability of the various taxing units to be refunded?

A. Well, the primary element is always the debt paying capacity, which can be determined principally by past performance, and the amount of income that can be derived from ad valorem or other sources for the payment of indebtedness—outstanding indebtedness.

Q. Does your company buy issues of municipal bonds, especially Florida, and then offer them for resale?

A. We have purchased—since I organized my new company we have purchased for our own account or with other members of a syndicate, issues of Florida bonds, Florida municipals for distribution to the public.

Q. In connection with your offering of bonds to the public do you put out a perspectus or other advertising matter?

A. Yes, sir. It is necessary in offering a security, or municipal security, to set forth in a circular the basis upon which you are offering that security. That is, why you think it is a good security, and why it should be bought, and why you think it can pay its interest and sinking fund charges.

Q. Then, without qualifying yourself as an expert, you are reasonably familiar with the procedure of municipal corporations and the issuance of bonds?

A. Yes, sir.

Q. Now, when you were with Ed. C. Wright & Co., were the bonds and coupons now held by the American National Bank and Ed. C. Wright & Co., were they then in the possession of Ed. C. Wright & Co. or the bank?

A. They were in possession—some of them were in possession of Ed. C. Wright & Company, and some of them in possession of the bank, as I recall it. I am—I think Ed. C. Wright & Co. had possession of some of the bonds and coupons. You mean the bonds and coupons represented in the proof of claim in this proceeding?

Q. That's correct.

A. Yes, sir.

Q. Now, on those bonds and coupons, did you, by yourself or in company with others, make any trips to Coral Gables with the view to collecting on those bonds and coupons?

A. It was one of my main activities for the greater part of a year. That is, one of my main activities was the effort to arrive at some settlement with the City of Coral Gables, and I would hesitate to say the number of conferences that I have had with officials of the City, or the trips that I have been down here on, and the number of meetings I have had with the City Commission. There were quite a few over a period of that year or eighteen months that I was actively engaged in attempting to work out a settlement.

Q. Now, will you review the negotiations that you had with Coral Gables from the period in 1937, when you first came here, until December, 1939, when the American filed suit on its bonds?

A. Well, my first contact, I believe, was either in the extremely late part of 1937 or the early part of 1938, and I discussed the matter at that time with the City Clerk, and one or two of the officials, and the City Attorney, I believe, and at first it was my desire to impress upon the City the fact that we were not or had no destructive intent in what we were attempting to accomplish, that we wished to avoid litigation, and I was also attempting to find out just what the attitude of the City and its officials would be toward a settlement and eventual

payment of the debt, and there was a series of conferences and meetings through which I became convinced that the then City Commission and its Clerk, Mr. Shaw, and Mr. Adams, were just as anxious to work this situation out as I was, and I think that they accorded me the same position in their views that I was in here, trying to do some constructive work. The result of all of it was that along about the middle of August, I think at one of our meetings here at a commission meeting here in this room—

Q. What year?

A. In 1939, up until—well, I might say this; that most of my negotiations prior to the summer of 1939, if I recall the correct time, were held up pending a municipal election; in other words, there was a municipal election coming up in June of that year, and it was my desire not to inject any refunding activity into a municipal election, and not to embarrass any of these then City Commissioners by having it made an issue in the election; and the concensus of the opinion as between the City Commission and myself was that it would be better to wait and let the new commissioners, whoever they might be, get into this thing. But after the city election, I think it was in June, 1939, I came down here for a meeting with the Commission after several other conferences in August, and at that time the Commission virtually told Mr. Shaw and me if we could get our heads together on something that Mr. Shaw thought that the City could carry out, that they would be very happy to pass it and go to work under it, and Mr. Shaw and I did that, and in the latter part of August, 1939, I brought a temporary agreement down here which, after going over it with Mr. Shaw and Mr. Adams and certain members of the commission, the City Commission decided to operate under that tentative agreement pending the final determination of a refunding program for all of the unrefunded indebtedness.

Q. Was that tentative agreement in writing?

A. The tentative agreement was in writing. It was adopted by the City Commission, and as I recall it, certified copies were executed, but due to the absence from the commission meeting of one member of the commission, and feeling that at some subsequent time he might come in and feel that his judgment in the matter had been overlooked and that he might criticize some member of the commission, I recall distinctly returning the papers to Mr. McGarry, I think right after they were executed, and I told Mr. McGarry to put the papers in his desk, and that I didn't want the executed papers or the certified copies of the resolutions until such time as he had the unanimous consent and approval of the City Commission, that I didn't want him to be criticized, or any member of the commission, or Mr. Shaw.

Q. Interrupting you there, have you a copy of the paper that was prepared and executed at that time?

A. Yes, sir.

Q. Will you produce that? (Paper produced and handed to counsel). Is this a carbon copy of the original paper that was executed at the time it bears date, of August 2, 1939?

A. Yes, sir.

Q. Do you know where the original is? Did you ever see it after you gave it to Mr. McGarry?

A. No, sir.

The Master:

Just a minute, Mr. Berry. What do you mean by "executed" there?

Mr. Berry:

Do you want this in the record?

The Master:

Yes.

Mr. Berry:

The witness has stated that the members of the commission, in the absence of one member, adopted this agreement and that it was signed but not delivered, he turning a copy which bore the signatures of all parties back to the Mayor at that time, Mr. McGarry, and told him when he got the consent of the other member to send it to him, and he stated up to now that he has never seen that paper since. This is a copy of the agreement which had the signatures put on it at that time.

The Master:

The reason I asked the question about what you meant by "Executed", I thought that the witness said a resolution was passed, and certified copies signed.

Mr. Berry:

Well, I will ask him exactly what was done with this paper. I now wish to introduce this paper, consisting of four sheets, in evidence as Defendants' Exhibit No. 38.

Mr. Adams:

We object to the introduction of it on the ground that the witness' testimony regarding it shows that it was not consummated, and that it was a tentative proposed proposition that was never executed and never went into effect, and has no bearing on the issues of this case. And further, that the record shows that one of the parties in whose behalf this tentative agreement was proposed is the one who began litigation against the City.

The Master:

I think the instrument is admissible for what it is worth, but I have not yet been satisfied as to just what the witness meant and what Mr. Berry meant when they referred to "executed".

Mr. Berry:

I am going to ask him in more detail regarding that right now, if Your Honor please. Will you mark the exhibit, if Your Honor please?

The Master:

I will overrule the admission of the document until you have finished questioning him.

(Instrument marked, only, at this time, as Defendants' Exhibit No. 38.)

Q. The first page of Exhibit 38 now marked for identification is a Resolution authorizing the execution of an agreement for the purchase of certain matured coupons of outstanding original bonds of the City of Coral Gables with Ed. C. Wright & Co. At the bottom of that, dated the "blank" day of August, 1939, there is a certification that the foregoing is a true and correct copy of Resolution No. "blank", with a line with City Clerk under it, and I will ask you if the original of that was ever signed by the City Clerk?

A. It was passed by the City Commission, and the City Clerk came out to the City to get his seal, and to the best of my knowledge as I recall it it was actually executed and the seal placed on it.

Q. You mean by executed, in this place where it is blank, the seal of the City was affixed?

A. Yes.

The Master:

I would suggest, Mr. Berry, that what the witness means is that it was certified, instead of executed. Is that correct?

Mr. Berry:

Now, as to that I am going a little further, if Your Honor please.

Q. Attached to that is a copy of a memorandum of agreement made and entered into this 3rd day of August, A. D. 1939, by and between the City of Coral Gables, Florida, a municipal corporation, as party of the first part, and Ed. C. Wright & Co., Inc., a Florida corporation, as party of the second part, and on the last page is the name "The City of Coral Gables by "blank", Mayor, Attest by "blank", City Clerk, Party of the First part," and the same is true of Ed. C. Wright & Co., Inc., following that. I will ask you whether or not signatures were affixed to that page of the original, under the typewritten names?

A. To the best of my knowledge, and as I recall it, the City of Coral Gables executed it. It was not executed by Ed. C. Wright & Co. We brought an agreement down here, and it was changed after we—I mean a signed agreement, down here, and the agreement was changed, so it would have been necessary for me to take the agreement back to St. Petersburg for execution by Ed. C. Wright & Co.

Q. And instead of taking it back, as you have testified, you handed it to Mr. McGarry to get the consent of one other member of the Commission?

A. Out of consideration to Mr. McGarry, Mr. Shaw, and other members of the Commission, I left it with Mr. McGarry in order that they could make the execution—the passage of the resolution and the execution of the instrument the unanimous act of the City Commission.

The Master:

I think I understand the situation now.

Mr. Berry:

I understood Your Honor at the beginning of these questions to state that until it was made more clear you would withhold the admission of this as an exhibit. Is it now admitted?

The Master:

It is now admitted.

(Instrument in question admitted and marked as Defendants' Exhibit No. 38.)

Q. Did you leave Coral Gables on or about the time of the events you have mentioned?

A. I left Coral Gables the day of August 3rd and returned to St. Petersburg, and this was to be mailed to me after Mayor McGarry had been able to get in touch with Colonel O'Shaughnessy, who was ill at the time in North Carolina. They tried to reach him by phone when I was in the office, at the commission meeting, but he was several miles away from a phone, as I recall it, and they were unable to get ahold of him.

Q. Now, have you seen the original of this instrument with those signatures on it since the 3rd day of August, 1939?

A. I have not.

Q. Now, at the time this instrument was presented, did you have any other verbal understanding with the City of Coral Gables with reference to the unrefunded debt?

(A.) Q. This agreement, authorized by resolution, was in the nature of an agreement that would extend throughout the period of a year. The City, within a period of 60 to 90 days, as I recall it, were taking up a certain amount of coupons at two-thirds of their face value, and then for the next ensuing fiscal year they were to levy 3/10ths of a mill, I think it was, 3/10ths of a mill for the next year, and the proceedings of that levy would be applied to the purchase of matured coupons at two-thirds of their face value, and there was a further provision in there that the City could, if it wished, get the equivalent of a 3/10ths of a mill levy from other sources if it so desired,

but they would raise an amount of money equal to that sum of money which a 3/10ths of a mill levy would produce and would buy the coupons with it, and during that time there was an understanding between myself and every member of the commission that we would attempt to arrive at a final settlement of all of the unrefunded indebtedness. This payment of coupons at a certain proportion of their face value was, I considered, an evidence of good faith on the part of the City. We had never instituted suit or attempted by litigation to collect funds when other people were getting money, and they entered into that agreement with the understanding that during the period of a year we would try to arrive at a final settlement of the matter that would be mutually acceptable to everybody concerned.

Q. Mr. Roberts, I believe Mr. Shaw testified that prior to the bringing of suit you had not made demands on behalf of Ed. C. Wright & Co. and the American National Bank for the payment of these bonds and coupons. I will now ask you if there was any doubt in anybody's minds during these negotiations that you were attempting to collect or adjust this indebtedness?

A. I never made, or I never brought bonds and coupons down here and presented them for payment, but there could never have been any doubt in the mind of anybody on the commission, or Mr. Shaw, or the City Attorney, that we would enforce collection of these items if we couldn't arrive at some just settlement.

Q. Now, at the time of these events—

A. (Interrupting.) As I recall it, a part of that agreement there is to the effect that we would withhold any litigation unless somebody else came in and brought a suit, in which event we would be relieved from that promise not to institute suit. In other words, if somebody else brought a suit, we could then decide in our own minds whether it was necessary, to protect our interests,

by similar litigation, but there couldn't have been any doubt in anyone's mind as to our intention of collecting these items.

Q. Now, whom were you dealing with, by name, as representing the City of Coral Gables in these negotiations? Who was present representing the City?

A. Well, the City Commission at that time was Mayor McGarry, and Hollis Rinehart, Colonel O'Shaughnessy, Keith Phillips and Joe Whitley; that was after the June, 1939, election. The most of my—now, my negotiations—final negotiations were always with the Commission as a whole. As I stated a while ago, the Commission, prior to the drafting of this tentative agreement and resolution, just told George Shaw and me to get our heads together and get the thing in some form within the ability of the City to carry on and bring it in there, and if it was just and equitable, they would pass it. I had conferences with practically every member of the Commission, individually and collectively, but principally with Mr. Shaw and the Mayor and the City Attorney.

Q. Now, during any of those conferences at that time, August 3, 1939, was there any statement made to you by the City that there was an impediment in paying you, and that they would not deal with you or adjust with you except on the basis of the 1937 adjustment plan?

A. I don't—there wouldn't have been any basis for negotiations, because I made it clear to the City in all of my negotiations that we did not approve the 1937 refunding plan, and the City Commission never stated to me that the basis of the proposed settlement would have to be the 1937 refunding plan until about in I think the latter part of December.

Mr. Redfearn:

What year?

A. 1939.

Q. Now, at the time this plan which is marked Exhibit 38 was discussed between you and the Commission, did anybody representing Coral Gables state to you or make the claim that Coral Gables would be unable financially to carry out that plan?

A. On the contrary, upon Mr. Shaw's and my arriving at this temporary means of working it out, I thought everybody was satisfied, and that they felt confident that this wouldn't impair their municipal functions in the slightest degree.

Q. You were dealing in good faith with them?

A. I don't think there was ever any question of good faith. I think they had the fullest confidence in what I was attempting to do, and I had the fullest confidence in them.

Q. And did they express their confidence at the time that this plan was sufficiently feasible that they could pay the amounts called for under the plan?

A. Yes, sir.

Q. Now, Mr. Roberts, at that time and both before and after that, were you aware as to settlements being made by Coral Gables with others?

A. Yes, sir.

Q. What was the extent of your information?

A. Well, I knew that in certain instances judgments had been settled, and there was at that time a series of judgments being paid off by mandatory levies at a hundred cents on the dollar, and I couldn't see why we should be discriminated against in favor of them, and I would hate to have to state specific instances, but I do know the City made several settlements as it went along with bondholders, other than a settlement under the 1937 refunding plan.

Q. And did you discuss any of those settlements with representatives of the City as a basis for the trading you were doing?

A. The only discussion I had with the City was with respect to those judgments which were being paid by mandatory levies. I may have made the remark at times that I knew somebody was getting some money, or this, that and the other, but I didn't criticize the City, and I knew they were working under difficulties, and as I said a while ago, I felt they were attempting to do the best they could under the circumstances. We forebore bringing suit or instituting litigation throughout all that period.

Q. Did the City at any time up until the end of December, 1939, represent to you that settlements were being solely made under the 1937 plan?

A. The City wasn't in a position to say that the 1937 plan was the only basis of settlement, and they never so stated to me.

Q. Did they attempt to settle with you on that basis?

A. I think the only reference to the 1937 plan was the last meeting which I attended in the latter part of December, and I think in the heat of the argument either some commissioner or counsel for the commission made a remark we could either settle under the 1937 plan or bring suit, or do as we pleased.

Q. Now, going back to August 3rd, when you left here do you remember when you came back again, or did you have any correspondence before your next visit here?

A. I don't recall how many times I came down after the August settlement, but I still felt an agreement might be reached between ourselves and the City, and I came down here several times and met with Mr. Shaw and talked the thing over with him, and talked the thing over with the City Attorney and various members of the Commission, but we never had a commission meeting, I don't believe, between August and December, 1939. I was endeavoring to get to some basis of an understanding.

Q. Well, now, on these trips subsequent to August 3rd, what was stated to you about the original copy of this Exhibit 38?

A. It was stated—

Mr. Adams:

We object to the witness saying it was stated, without saying who stated it.

The Master:

I think he should say who said it.

A. Well, I talked with Mr. McGarry and Mr. Shaw on several occasions subsequent to the August meeting, and they stated that Colonel O'Shaughnessy would not approve the contents of the tentative agreement, and expressed their dissatisfaction with Colonel O'Shaughnessy's views respecting it.

Q. But to wind the matter up, the agreement of August 3rd, Exhibit 38, the original part of that was never delivered to you executed as a contract?

A. I haven't seen it since August 3rd.

Q. Now, coming on down to December, 1939, tell us what happened then.

A. Well, after a series of conferences, as I stated, I still felt that something could be worked out, and it was the view, I think, of Mr. Shaw and Mr. McGarry and Mr. Rinehart and Mr. Adams that something could be worked out, if we could just sit down with the commission and talk it over. We came in here for a meeting in the morning of some day the latter part of December, 1939;—

Q. Well, state who "we" is.

A. Mr. Wright and I were down at that time; I'm not sure whether Mr. Warren was with us or not, but I think he was. And we took the matter up with the City, and then they had a City Commission meeting out here in

the afternoon, after which we determined that we had gone just as far as we could. In other words, the attitude of the commission, and their special counsel, and certain commissioners was such as to preclude any hope of settlement.

Q. Now, if any remark was made about the validity of your bonds by special counsel for the City at that time, please state what it was.

A. Well, we were discussing the possibility of refunding the bonds. As I recall it, it was after I had suggested a plan, and Mayor McGarry asked special counsel what he thought about it, and special counsel said that he had at some previous date prepared a brief relative to the validity of certain issues of bonds outstanding in the City of Coral Gables. My answer to special counsel was to the effect that we hadn't come to Coral Gables to discuss validity, that we felt validity had been established, if not by the 1937 refunding plan, certainly by the vote of the people, and that if he wanted to discuss validity he would have to discuss it with somebody else; that we were there to talk about a settlement of the indebtedness. Special counsel stated that in his opinion some of the issues were not valid issues.

Q. Were they some of the issues of which you held bonds?

A. Special counsel didn't state which particular issues he considered invalid.

Q. Who was the special counsel?

A. Mr. Redfearn.

Q. Were the bonds which Mr. Redfearn, as counsel, claimed were invalid, were they bonds of the issues which were being refunded at the time under the 1937 plan?

A. Yes, sir.

Q. Do you know whether any suit was later brought by the City to test the validity of those bonds?

A. No suit was brought by the City subsequent to the 1937 refunding plan as to validity. As a matter of fact,

the City, by referendum to the freeholders of Coral Gables, approved the 1937 refunding plan as to the then existing outstanding indebtedness.

Q. Mr. Roberts, of your own knowledge do you know whether or not in various suits against the City, the validity of any of these various issues of bonds was challenged and passed upon by any Court?

Mr. Adams:

We object to the witness answering the question, if Your Honor please. Those are matters of record, and he is not a lawyer, and he is a bond salesman, and hasn't shown he is competent to answer.

The Master:

I think there is a better way of proving that, Mr. Berry; objection sustained.

Q. At any of the times that you visited Coral Gables or came in contact with their officials looking to the settlement of the claims you were representing, did you on behalf of Wright & Co. or the American National Bank, refuse to negotiate further or take less than par and interest on your bonds and coupons?

A. At the conclusion—or rather, before the December meeting I specifically asked Mr. McGarry and Mr. Shaw if they saw any use in prolonging the negotiations or carrying the discussion further, and their opinion was (similar to mine, that we had gone just about as far as we could in view of the attitude of one or two members of the Commission, and as expressed by Mr. Redfearn, it just threw the meeting in turmoil and confusion, and when I left that afternoon it was my very definite understanding with Mr. Shaw, Mr. McGarry and Mr. Adams that we would have to take action.

Q. Do I understand you now to say, Mr. Roberts, that after Mr. Redfearn, as counsel, made his report of the

doubtful validity of some of the bonds, that you were told it would be necessary to litigate to get any settlement, or were you still offered the 1937 settlement?

A. We were told by a member of the commission in conference—I mean, various members of the commission--

Mr. Adams:

We insist upon the witness stating who told him this.

A. Well, I know that Colonel O'Shaughnessy made the statement in the meeting we could either accept the 1937 refunding plan or we could do as we pleased, and any adjustment would have to be based upon the 1937 refunding plan, and that anything else, we would have to get that in our own way, or words to that effect.

Q. Did you interpret that or understand that, that it would be necessary for you to bring suit or accept the 1937 plan?

A. That statement couldn't have made—

Mr. Adams:

We object to the witness' interpretation of what was said; he has testified as to what was said, and that's as far as he can go.

The Master:

No; let the witness answer the question.

A. I accepted the statement as an invitation to bring suit if we didn't like what they had to offer.

Q. Well, did you make any statement to them about bringing suit?

A. Not to the Commission as a whole. It was only in the discussion with one or two of the officials that I had worked more closely with. I wanted them to say to me whether we should go on and negotiation further or not,

and when they said "No", I said, "Well, I see no alternative than to bring suit".

Q. Who did you say that to?

A. I said that definitely to Mayor McGarry and Mr. Shaw, and I don't know if any others were around at the time, but I recall saying it to them.

Q. And that was prior to the institution of suit on behalf of the American National Bank?

A. That was on the afternoon, I think, prior to the filing of the suit. As I recall it, litigation was instituted the next day.

Q. Had you had any dealings with Mr. Redfearn, as counsel for the City, prior to that meeting in December here in this room?

A. No, sir. The meetings that I had were either with members of the commission sitting as the City Commission, or with them individually, or with the City Clerk or City Attorney, and it was the first time that any reference was made as to valdity on the part of anyone in these discussions.

Q. Well, was the remark of Mr. O'Shaughnessy that they would still settle on the 1937 plan for the bonds that you held made before or after Mr. Redfearn's statement of the invalidity of the bonds?

A. I don't recall. It was during the discussion of some proposed plan.

Q. Now state whether or not Mr. Redfearn made any protest about offering you a settlement under the 1937 plan, in reference to the invalidity of the bonds?

A. No, sir.

Q. Now, I believe you stated that on the next day a suit was instituted on behalf of the American National Bank?

A. Yes, sir.

Q. Who was counsel for the bank in that case?

A. Wylie & Warren, of St. Petersburg.

Q. Do you know whether they are today representing the bank?

A. Sir?

Q. Do you know whether they are today representing the bank?

A. I don't know whether they do or not.

Q. You are no longer and have not been for a year connected with anybody in the case?

A. No, sir; nor have I been following the litigation. This is my first participation in it.

Q. Mr. Roberts, in response to a question a while ago you said when this proposed agreement, Exhibit 38, was under consideration, that there were discussions regarding a refunding of all the unrefunded indetbedness of Coral Gables. Did you have such discussions with the City?

A. Yes, sir. We discussed at almost all of our conferences or meetings some form of final settlement which would take care of all of the outstanding unrefunded indebtedness. I always insisted that the judgment creditors who were receiving the benefit of mandatory levies would have to come in as to the plan of settlement as well as all other bondholders that we could find.

Q. What was the general plan under discussion for the refunding of this indebtedness?

A. No definite terms were ever determined upon. Most of my discussion was to the effect that a plan of settlement could be devised which would be acceptable to the bondholders and which could be serviced entirely by the proceeds of the then mandatory levies plus the proceeds of the levy which was being made for the issue of 1937 bonds which had not been exchanged. It was always my theory that a plan of refunding could be developed that could rest upon those particular receipts, and which would not increase the ad valorem levy of the City at that time—at that particular time.

Q. How did you propose to evidence whatever the City was going to do for the unrefunded indebtedness? Would that be in the form of a new bond issue, or what?

A. It would be in the form of a new bond issue.

Q. And were you planning to exchange that with the unrefunded debt holders, or what?

A. We planned to submit it to the holders of the unrefunded indebtedness as well as the judgment holders when such a plan was developed.

Q. Were you planning to make a sale of any of the bonds if they could not be exchanged?

A. I don't think it was discussed. I don't think it was discussed from a sales standpoint at that time. We did discuss, however, from time to time the necessity which might arise of paying off some judgment creditors, at which time I don't think I ever definitely committed myself to it, but I certainly attempted to leave the impression that we would deal with the judgment creditors, and if necessary, buy a sufficient amount of them to give us a 66-2/3 representation in the bankruptcy.

Q. State from your familiarity with the municipal bond market, and especially the Florida municipal bond market, if a bond had been devised at that time that met the maturity and interest requirements of the then market, it could have been sold?

A. Undoubtedly.

Q. Was the market more or less active, is what I am asking.

A. Undoubtedly. The market in Florida bonds has been steadily improving.

Q. State whether or not in your opinion as a bond dealer an issue of bonds sufficiently large to take care of all of the unrefunded indebtedness of Coral Gables can be issued, and assume that it is first offered to the holders of this unrefunded indebtedness, and the balance of it, if not all of it is accepted, if put up for sale it can be sold?

Mr. Adams:

We object to the question as being totally irrelevant and incompetent and inadmissible to any of the issues in this cause, and as not containing sufficient details as to the quantity of the bonds and terms of them for the witness to possibly be able to answer.

Mr. Berry:

I am asking the witness. He knows the amount of the indebtedness; he has so stated.

The Master:

The objection is overruled.

Q. Do you know the amount of the unrefunded indebtedness?

A. The amount of the unrefunded indebtedness, including interest on matured items and judgments as of July 1, 1941, will be somewhere in the neighborhood of $680,00., I believe. It will be between 675 Thousand and 685 or 90 Thousand. I can't give you the exact figures, but I believe that's where it would be.

Q. Now, if a bond issue was to be floated at this time, you, as an expert in Florida municipal bonds—what type of issue would you suggest?

A. I think it would have to be a term issue, because the bonds should be offered to present creditors in exchange for evidences of indebtedness that they now hold. I worked out a schedule on this in the past. I don't have the figures with me, but an issue of bonds between 650 and 700 Thousand Dollars could be paid within a period of 25 years without any material increase in the city's present tax levy for debt service.

Q. What interest rate would you propose?

A. I would say that the City could sell Fours. (4s); could sell 25 year 4s right now if they wanted to offer them.

Q. Well, now, you are in the bond business, Mr. Roberts. In the event say $700,000. of 4% twenty-five year bonds, supported by a necessary levy to pay them off at maturity, was offered, would you or not bid on them?

A. I think you would probably have a stampede of bond brokers wanting to bid on them.

Q. What are the usual terms for making an offer on Florida bonds? How much do you deposit as a good faith offer?

A. It is, as a rule, 2 or 3% required; it is generally presented in the form of a cashier's check or certified check, and serves as a guarantee of performance; if you don't take the bonds when they are ready for delivery, they take the check; usually two or three percent.

Q. Well, if such an offer was made by Coral Gables, and with your familiarity of their ability to pay, and the bonds properly validated under the laws of Florida, would you or not make a firm offer on the bonds at par and put up your check for 3% of the amount?

Mr. Adams:

We object to the question to the witness as being incompetent and irrelevant. If accompanied with a check to his answer, it might be more competent, but I think it is a speculation that is totally incompetent.

The Master:

I don't think that the answer can prove much, but let the witness answer the question.

A. I would very gladly give the City a bid of par for an issue of 4s in the principal sum of $700,000. or so much thereof as was necessary—or so much thereof as would be equivalent to the present outstanding indebtedness; a bid of par for the bonds when, as and if issued; and I would be glad to place a certified check in their hands tomorrow for 3% of the $700,000. to guarantee performance.

Q. Would the check be on a good bank?

A. Yes, sir.

Q. Referring back to the suit instituted by the American National Bank, had you communicated, or had Mr. Wylie, to your knowledge, communicated with either the American National Bank or with me as the bank's counsel relative to the filing of that suit?

A. Yes, sir.

Q. Was or was not the filing of the suit authorized by the bank?

A. Yes, sir.

Q. When you came to Coral Gables for that conference, was or was not the bill for the collection of that indebtedness prepared and ready?

A. Yes, sir.

Q. And upon the failing of negotiations, then you filed it?

A. I felt that we had gone far enough; we had stayed away from litigation as long as we could afford to do so, and I came down here that last day with the full intention that if we didn't arrive at some understanding, or some understanding wasn't in sight for a subsequent meeting; in other words, it wasn't exactly a fill-or-kill proposition, but I wanted to be prepared, in the event we decided that suit was necessary, to institute suit while we were here and preclude having to go back to St. Petersburg and come back again. The papers were all prepared and the suit was authorized before we came down.

Q. Now, Mr. Roberts, coming down to the present time, have you made any studies of the affairs of Coral Gables in your capacity as a bond expert, looking to how bonds can be serviced, to see what effect the issuance of bonds would have on Coral Gables if the bonds were used to refund the unrefunded indebtedness?

A. Why, I have seen it, and I naturally have to follow through the course of Coral Gables' financial affairs

because their bonds are traded every day in the market. I have to know what the assessed valuations are, I have to know what the tax levies are, I have to know about how they are getting along, the population, and debt, and things like that, and of course, those figures are always more or less before me. I have seen other cities in the State take care of their unrefunded indebtedness by subsequent refundings and carried them out very successfully. As a matter of fact—

Mr. Adams:
We object to the volunteered portions of the witness' answer, about the other refundings.

The Master:
I think that objection is well taken.

Mr. Adams:
And move to strike that portion of it.

The Master:
The motion is granted.

Q. Mr. Roberts, on yesterday, Mr. Bradford was on the stand and he made up a schedule proposing the issuance of bonds in the amount of $454,384.23, to be used in connection with the bonds of the 1937 issue of $233,500., which are held under that plan and not yet issued, the new bonds to have the same maturities and interest rates of the bonds now provided for, showing the millages necessary to care for those bonds. I will show you this exhibit and ask you if you have ever seen it before, this being Defendants' Exhibit 35.

A. I have never seen that schedule before.

Q. Will you now examine it, and I will state that the Column No. 6, which is the assessed total value of prop-

erty in Coral Gables, is taken from Plaintiff's Exhibit No. 27, as given by Coral Gables itself, and they are the present assessed values, and those that they themselves have set up as future values. Now, after having examined Defendants' Exhibit No. 35, and assuming the issuance of bonds as therein set out, do you think the tax levies there are sufficient to service those bonds?

A. I would like to satisfy myself first on one question. There is only 454 odd-Thousand Dollars provided for here, and then in your question you set forth the $233,000, I think it was, bonds issued under the 1937 plan.

Q. That's right.

A. Now, are the terms of the bonds issued under the 1937 plan the same as these terms?

Q. Identical; yes.

A. And this purports to show the additional levies necessary?

Q. The proposed plan which I am asking whether you agree to or disagree to, it is to take up the approximate $687,000 of unrefunded debts by the bonds now unissued from the 1937 issue, and by the issuance of an entirely new issue of identical bonds, but supported by an additional levy.

A. I understand you now. Without an actual mathematical check of these figures, and assuming the calculations throughout to be correct, and Mr. Bradford is a very capable man in his work, I would say that his estimate of millages to be levied and estimate of collections on that roll as an average over this period—this entire period of time was in accord with ordinary municipal accounting procedure, and if anything, it is somewhat on the conservative side. He only estimates an 80% current collection. I think the City's indebtedness all having been cleaned up, that you could probably anticipate a little bit better than 80% current collection, and therefore I say he is on the conservative side. And another thing here,

during the process of this present litigation, I think funds have been accumulating under the mandatory levies, and also for this $233,000 of bonds which were issued under the 1937 plan, which I might suggest here—I don't know—if that were furnished as a further cushion this schedule would be even more conservative because there must be a considerable sum of money there. I would say that that would work out.

Q. If you made an issue of bonds a flat 4% instead of a variable rate, beginning at 3% and ending at 5%, as shown in Defendants' Exhibit 35, would the interest cost to the City be more or less on the 4% interest?

A. The cost would be less on a 4%; that is, a straight 4% coupon.

Q. From your familiarity with the affairs of Coral Gables, in the event this plan was put into effect and the mandatory levies were discharged, would this add to the millage assessment of Coral Gables to adopt this plan?

A. Under his schedule he calls for an increase of millage running from 7/10ths of 1% to 9/10ths of 1% over the life of the issue.

Q. But at the same time, that would relieve the mandatory levies. Do you know what they are?

A. (After an off-the-record discussion.) I misunderstood your preceding question, in that the levies necessary under the mandatory writs are in excess of the levies set forth in Mr. Bradford's schedule, and as a matter of fact, it would be necessary to collect a smaller tax levy under Mr. Bradford's suggestion than the City is now collecting.

Q. Just to put it in the record, Mr. Roberts, if instead of issuing the $233,000 of bonds which were authorized under the 1937 plan, and are now held, unissued, if they were canceled and added to the proposed issue here, and the servicing of those bonds as there proposed was transferred to this, would that make any difference whatsoever?

A. None whatsoever.

Q. And your answer is, if they were all converted to the 4% issue instead of the variable issue, as proposed there, your answer would be the same as to the entire amount as to this, they would come within the present debt service requirements, including the mandatory levies. —That's all.

Direct Examination.

By Mr. Gibson:

Q. Mr. Roberts, have you purchased any Florida bonds of the nature referred to, at 4% interest, and if so, tell us the aggregate and of what cities.

A. Well, the last two issues I bought this year, there was about Two and a Quarter Million of City of Bradentown 4s in January of this year, and something in excess of $300,000 Highlands County School bonds as 4s in January of this year, and all of the bonds have subsequently been disposed of and distributed to retail accounts.

Q. Now, from an intrinsic standpoint, and from a marketability standpoint, would the bonds that you have purchased be viewed as superior bonds to the issue of $700,000 of Coral Gables herein referred to, or would the Coral Gables bonds be superior bonds?

A. Well, several elements enter into that. As to the Highlands County School District 4s, I would consider them quite superior to City of Coral Gables 4s on account of the very small indebtedness in Highlands County, but as to Bradentown, I would prefer a City of Coral Gables 4% bond, due in the same period of time, than a City of Bradentown 4% bond; I think there would be a better market, and I think the City of Coral Gables is better able to meet its obligations.

Q. In other words, I understand you to say that you have purchased and disposed of readily 4% bonds of the City of Bradentown aggregating a Couple of Million

Dollars, and that those bonds are inferior in quality to the proposed issue of Coral Gables bonds?

A. I would say that I would prefer having for distribution to the public $700,000 of City of Coral Gables 4s, due in 25 years, than $700,000 of City of Bradentown 4s due in 25 years.

Mr. Gibson:

That's all.

Mr. Berry:

Cross examine.

Mr. Adams:

We reserve the right to make motions to strike and cross examine at a later time.

The Master:

It is so ordered.

(Witness excused.)

Mr. Lea:

Now, if Your Honor please, this is a little bit out of the orderly procedure, but I have a man here waiting, that wants to get away, and I want to call him at this time.

1228 CHARLES S. ROBERTS was called as a witness on behalf of the objecting creditors, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Lea:

Q. Please state your name.

A. Charles S. Roberts.

Q. What is your profession, Mr. Roberts?

A. I am a certified public accountant.

Q. At my request did you make an analysis of proofs of claim and consents filed in this bankruptcy proceeding?

A. I did.

Q. Can you state briefly what that examination consisted of?

A. Briefly, my examination consisted of an examination of all the proofs of claim that were filed in this case, an examination of the tax participation certificate register of the City of Coral Gables, and that was about all.

Q. Did you further examine those proofs of claim and consents to determine whether or not there were any duplications, and whether or not there were other exceptions, as noted in your report thereon?

A. I did, and I found seven exceptions, as I recall.

Q. Do you have a final conclusion on your examination?

A. Yes, sir.

Q. Would you state what that is, please?

A. All right, sir. I found that proofs of claim and consent filed up to and including August 26, 1940, amounted to $7,470,172.30. In addition, I found that there were filed subsequent to August 26th, as I recall, the last date was December 12th, an additional amount of $533,738.09, making a total of $8,003,910.39, proofs of claim that were filed in this case.

Q. Now, what exceptions, and so forth, did you find in those proofs of claim? Will you list those for us?

A. Do you care to have me read them?

Q. I think so, just to acquaint the Court with what you have done.

A. I found exceptions of $594,162.08 in these proofs of claim.

Q. State what those exceptions were in the order you have listed them.

A. All right. They were as follows:—

Mr. Adams:

Pardon me; what page is that on?

A. Page 2. Tax participation certificates, first series, filed, which were not in agreement with ownership on date filed in accordance with the TPC register, $63,924.55. Tax participation certificates, first series, filed, where the ownership of the same certificates were filed by different claimants, $15,519.00.

Q. Now, just one moment; let me interrupt you there. You didn't take that off twice, did you? You just took it off one time?

A. That's correct.

Q. All right; I see; go ahead.

A. 3: Tax participation certificates, first series, filed by agents, executors, administrators, etc., wherein the instrument or instruments in writing showing the authority of the said claimant to act in his representative capacity was not attached to proof of claim and consent, $307,696.75. Now, at this point I might say that this particular group included one proof of claim filed by Mitchell Wolfson, and this same exception was in No. 1, but I am eliminating it at the bottom. 4: Tax participation certificates, first series, filed wherein the consents were ordered withdrawn by Court order as requested by claimants, $20,500.00. 5: Bonds, first series, filed by agents, executors, administrators, etc., wherein the instrument or instruments in writing showing the authority of the said claimant to act in his representative capacity was not attached to proof of claim and consent, $156,500.00. 6: Bonds, first series, filed, wherein there was a duplication of bond numbers, $36,500.00.

Q. You didn't take that off twice, either, did you?

A. No, sir. And in this case there was also a duplication with the exception in No. 5, which I am eliminating at the bottom. 7: Bonds, first series, filed, wherein there were errors in amount claimed; that is, they had filed so many bonds; but the total didn't tie up; $2,000.00; which

gives me a total exceptions of $602,640.30, less duplications, $8,478.22; leaving net exceptions of $594,162.08.

Q. Now, just one moment, Mr. Roberts; on that same page, where you said that the tax participation certificates wherein the ownership of the same certificates were filed by different claimants, you mean by that that two persons filed on the same bonds?

A. That's exactly what I mean.

Q. And that's the same thing as to the exception below that, to the same effect?

A. Exactly.

Q. Two parties said they owned the same bond that they filed on?

A. That's correct.

Q. Now, did you find as of August 26, 1940, that the City had two-thirds of the consents in this proceeding?

A. No, I did not.

Q. State just how much the deficit was, and explain that to the Court.

A. I was informed that the outstanding indebtedness of the City of Coral Gables at January 1, 1937, amounted to $11,182,606.36; a two-thirds majority of that would amount to $7,455,070.91. Valid proofs of claims up to and including August 26th, amounted to $6,934,587.04. Hence, at that point I would say it appears there was a deficit in the amount filed of $520,483.87.

Q. Now, how about subsequent to August 26th?

A. Subsequent to August 26th, it appears there was a deficit in the total amount filed of $45,322.60.

Q. And you have made a separate analysis of each one of your exceptions?

A. I have.

Q. And you have those listed in those books I have given you?

A. That's correct.

Q. Those are your work?

A. Yes, sir.

Mr. Lea:
I now introduce those in evidence.

Mr. Adams:
We will reserve the right to move to strike and cross examine him until a later time.

The Master:
It is so ordered.

(Instruments identified by witness marked, only, as Defendants' Exhibits 39, 40, 41 and 42.)

Mr. Lea:
That's all.

(Witness excused.)

(There being no further witnesses available for examination, a recess was taken until the following morning, June 27th, 1941, at 10:00 o'clock A. M., at which time the hearing was reconvened and the following proceedings had):

Mr. Lea:
I move that the Charter be introduced, of the University of Miami, into evidence, being taken from the public records of Dade County, Florida, the copy produced being a certified photostatic copy thereof.

Mr. Adams:
We object to its introduction as being incompetent and irrelevant to any of the issues in this cause.

The Master:
On what theory are you introducing that, Mr. Lea?

Mr. Lea:

On the theory to show that the City of Coral Gables is making an annual donation of $25,000.00 to a private corporation when it claims that it is bankrupt and can't pay its debts, contrary to the constitution of the State of Florida. We won't have a chance to argue the legal points on that until we get to final argument, but that's the basis of it, and that's in the case.

(Off the record discussion had, preceding the following statement made for the record):

Mr. Berry:

Thereupon, in view of the objection and the length of the document offered, Mr. Lea moved to be allowed to read the relevant parts of the Charter into the record in lieu of filing the entire instrument, which was permitted by the Master over the objection and exception of the Petitioner.

Mr. Lea:

The relevant portions of the Charter, which is filed in Charter Book 40, Page 261 of the Public Records of Dade County, Florida, are as follows: "We the undersigned, being desirous of associating ourselves together for the purpose of forming a scientific institution of learning, otherwise known as a university, being an institution not for profit, under the provisions of Section 6495 (4499) and 6496 (4500), Compiled General Laws of Florida, 1927, and other laws relevant thereto, do hereby present for approval the following proposed charter therefor, namely: Charter of University of Miami, Incorporated"; that on July 19, 1934, the Judge of the Circuit Court examined the foregoing application and proposed charter and found that the same was in proper form, and for an object as authorized by the relevant statute of Florida, and thereby approved the said Charter.

1235 JOHN C. DONEHOO was called as a witness on behalf of the objecting creditors, and being still under oath, testified as follows:

Direct Examination.

By Mr. Lea:

Q. Mr. Donehoo, you testified yesterday, if I recall correctly, about the relative assessments of the City of Sanford, West Palm Beach and Coral Gables, and that in your opinion they were all about the same in ratio.

A. Over-all.

Q. Over-all, about the same?

A. Yes, sir.

Q. You further testified, if I recall correctly, about the millages in each of the cities?

A. Yes, sir.

Q. Now, will you state from your examination of each one of these cities, and from your knowledge of them, how much in dollars a $5,000 home in the City of Sanford would have to pay for city taxes; that is, ignoring the homestead exemption?

Mr. Adams:

We object to this testimony as being secondary and as not having proper evidence in the record of the tax rate and millage in Sanford, and it doesn't show them, or as to what year is involved.

Mr. Lea:

Well, I will revise that and put the year in, but everything else has been covered on yesterday.

Q. The last year which you have, which is 1940-41.

The Master:

I don't see the relevancy of that, Mr. Lea.

Mr. Lea:

If Your Honor please, I want to show what a home in each city would pay. He has stated they are all assessed about on the same level. I want to show to this Court a $5,000 home in Sanford would pay so much city taxes, the same home in West Palm Beach would pay so much, and the same home in Coral Gables would pay so much. I didn't have a chance to develop it yet, but that's my purpose.

The Master:

Well, we will let it go in for what it's worth.

A. Yesterday I testified that—by way of explanation—that improved residential property in Coral Gables was assessed at 100%, and that means that in any city there probably will be a variation in assessed values of the types of properties, but the over-all would be an average of all of them; it is an average; and therefore, in developing the assessed value in Sanford and West Palm Beach, I have taken percentages which are at variance with the 93 which was testified yesterday as being the over-all, for the purpose of determining the amount of taxes that a $5,000.00 home would pay in those cities. In Coral Gables, ignoring—I mean, with homestead exemption applied in all three instances—in Coral Gables a $5,000.00 bungalow, a bungalow being worth $5,000.00 would pay $40.00, in city taxes; in Sanford it would be $69.75; and West Palm Beach, $56.00.

Q. Now, how about a $5,000.00 business property in each of the cities?

A. In each of the cities, with the same manner of explanation, I find the ratio of business properties is about 93% in all of them, so I have used that factor. In Coral Gables, a business worth $5,000—a business property worth $5,000 would pay $102.30; Sanford, $139.50; in West Palm Beach, $158.10.

Q. Now, Mr. Donehoo, just one further question. I note that Coral Gables has the lowest dollar tax of any city. Now, which city, in your opinion, furnishes the most service for the taxes levied under that operation?

A. Of these three?

Q. Yes, sir.

A. I don't think there is any question but what Coral Gables does.

Q. In other words, its taxes are low, but at the same time it furnishes more service?

A. More services, yes, sir.

Mr. Lea:
That's all.

The Master:
Any cross on that, Gentlemen?

Mr. Adams:
No, sir; we reserve the right to cross examine.

The Master:
It is so ordered.

(Witness excused.)

1238 WALLACE D. BRADFORD was recalled on behalf of the objecting creditors, and being still under oath, testified as follows:

Direct Examination.

By Mr. Berry:

Q. This is Mr. Bradford?

A. Yes, sir.

Q. You testified in this cause on yesterday?

A. Day before yesterday.
Q. Day before yesterday?
A. Yes, sir.
Q. And I believe you told me that when you were to be recalled, that your expertness on distances was not as complete as your expertness on other matters, and you wished to make some statement about the distance from Miami to Coral Gables. Is that correct?
A. That's correct, Mr. Berry. Of course, I fully realize that the boundaries of Miami touch the boundaries of Coral Gables, but in riding from the Alcazar Hotel to the City Hall of Coral Gables it seemed to me like it must be fully twelve miles, and it was on that basis that I mentioned that I thought it was about twelve miles from Miami.
Q. Mr. Bradford, you introduced as Exhibit 35 a schedule showing bonds to be issued in the amount of $454,384.23, which appears in Defendants' Exhibit 35. Now, have you now prepared a schedule in more or less similar form increasing the amounts of the bonds to be issued by Two Hundred Thirty-odd Thousand Dollars, being the unissued bonds under the refunding plan of 1937, which would make the bond issue which you are now scheduling, $687,884.23?
A. Yes, sir.
Q. Have you that schedule before you?
A. Yes, sir.

Mr. Berry:
I ask that you file it as Defendants' Exhibit No. 43.

The Master:
Any objection?

Mr. Adams:
We reserve our objection, and the right to move to strike it at a later date.

The Master:
It is so ordered.

(Instrument marked, only, as Defendants' Exhibit No. 43.)

Q. Now, Mr. Bradford, both of the schedules have thirteen columns, have they not?
A. That is correct.
Q. Column 3 is the same in both?
A. Yes, sir.
Q. Column 3 is the same in both?
A. Yes, sir.
Q. Column 6, the assessed value total, is the same in both?
A. Yes, sir.
Q. And that, again, is taken from Petitioner's Exhibit 27?
A. That is correct.
Q. Now, all of the remaining columns except those are different, are they not?
A. Yes, sir.
Q. Will you kindly, as to the columns which are not the same, make an explanation in the same manner in which you made the explanation of the various columns in regard to Exhibit 35?
A. I will start, then, with Column 2. The amount of bonds outstanding at the beginning of Column 2 are, in the year 1941-42, shown at $687,884.23. I explained in my testimony of June 25th the manner in which I arrived at that figure. I would like to make it clear at this time, though, that that figure is arrived at without giving any account to the sums which have been collected by the City which are now on hand as the result of the mandatory writs for the payment on account of judgments, and without taking into account any monies that are held by

the City as a result of the collection of funds to pay the interest coupons on the $233,500.00 of bonds which are now held, authorized but unissued, and which under the plan of January 1, 1937, are exchangeable for the refunded debt; I would like also to note that in arriving at that figure I have not taken into account any payments which the City has made heretofore on account of the judgments under the writs of mandamus. I appreciate the fact that payments have been made which unquestionably will reduce the amount of bonds which are included in the judgments. Now, to what extent those are reduced, I hesitate to say, because it is possible that those payments, first of all, applied to interest, and the balance to principal, or it might be that until some judicial determination, there might be a pro-ration of the two, so that my attempt has been to set up an outside figure of the amount of debt which would be refunded under this arrangement, fully appreciating the fact that it might be lower, but I don't think higher. Now, then, as to Column 4, those interest requirements are merely the application of the interest rates, as shown, against the amount of bonds outstanding, as shown for the respective years. Column 5, or, bonds retired at par, is a list of the bonds which could be retired at par in the respective years, as shown, assuming that the taxes were collected at the percentages which have been estimated in this exhibit. Column 7, which is the millage required, is arrived at in this way. According to calculations which I have made from the exhibits of the City, I find that there were $4,111,670.20 of first series bonds—refunding bonds authorized to be issued. Of those $4,111,670.22 of bonds, there were $233,500 par amount that were not issued, and are still held by the City. That means that there are 5.6789% of the bonds of the first series authorized which have not been issued. Therefore, I have determined that from the millage which has been set in the refunding plan of January 1, 1937, to be more specific, after the adjustment made in the ordinance

of the City, No. 289, that millage would be reduced by the percentage which $233,500 is of the $4,111,670.20, namely, 5.6789%. So, that, beginning with the year 1941-42, where the millage is 5.88, there would be deducted from that millage 5.6789% which is .33 mills, and that millage would go over into this millage Column No. 7 in this exhibit toward the retirement of the bonds, as shown; to that .33 mills I have added .7 of a mill, which is the millage shown in the exhibit which I submitted on June 25th, making the total millage of 1.03 for the year 1941-42. By the same formula, I have followed through each year through 1976-77, so that for the year 1942-43 there was taken 5.6789% of the 5.88 mills required by the plan of January 1, 1937, for the first series bonds, which amounted to .33 mills, and to that I added the .75—I wish to correct that. In 1942-43 the millage under the January 1, 1937, plan for the first series bonds changes to 6.86 mills, so that 5.6789% of 6.86 mills is 39/100ths of one mill; to that we have added the .7 of a mill which produced 1.09 mills, and without using too many words, in following the formula through, exactly the same formula has been followed on through the entire number of years, so that in 1941-42 the millage to retire $687,884.23 of bonds would be 1.03 mills, and in the final year would be 1.25 mills, the latter being the highest for the entire period. Beginning with the year 1947-48, the millage which is added to that deducted from the millage required by the 1937 plan, is .75 mills instead of .7 mills, and the .75 addition continues constant until the year 1973-74, and beginning with the year 1973-74, the addition is .81 mills instead of .75. Column 8, which is the levy, is determined in exactly the same way as I testified with respect to Exhibit 35, that is to say, by merely the application of the millage as shown against the assessed value as shown for the respective years. Column 9, or 80% collection, is, as I testified on June 25th, 80% of the current levy shown, assuming that the City will collect at

least that percentage. Column 10, or 5% delinquent collection, represents 5% of the levy which was made two years previously, on the theory that when the City is authorized by law to offer tax sales certificates for sale, it certainly should be able to collect an additional 5%, making a total of 85%. Naturally, any sum which the City is able to collect in addition to that would go toward the more rapid retirement of the outstanding bonds. Column 11, total collection, is the addition of columns 9 and 10. Column 12 is the result of the substraction of Columns 4 and 5 from Column 11, and Column 13 is the accumulation of the surplus column, or Column 12, so each year, as there is a surplus, the amount is increased, and where it seems advisable because of the fact that the reserve is building up, to use some of that reserve, then such amount is deducted.

Q. In figuring the amounts which the City has collected and not used, such as interest on the unissued refunding bonds, and money used or collected to pay on the mandatory levies which has been held up, that has not been reflected up to this time in the various exhibits which you examined, in dollars and cents, has it, Mr. Bradford?

A. No, sir, it has not.

Q. And you did not extend your studies, as unnecessary to the records of the City, to make that determination?

A. That is correct.

Q. And you did that partly because you think there may be legal questions involved which you do not wish to pass on?

A. I think there may be legal connections—legal questions, I should say, in connection with the application of the payments under the writs of mandamus, but I think as to the collection of the mandatory levies in the current fiscal year, and as to the accumulation of the interest on the $233,500 of bonds, I think that with respect to those

funds it is possible that there might be some subject of negotiations between the City and the creditors.

Q. The existence of these funds which you have not taken into account are favorable to the City, are they not? In other words, they would permit a further reduction when they are used?

A. Oh, definitely.

Q. Now, take the total millage requirements on Defendants' Exhibit 43, which you have just filed, and add that to the balance of the millage levy by the City of Coral Gables for debt service as projected on their exhibit but deducting that part of it which would be applied to the unissued bonds. Does that total of those two figures exceed the debt service levy of Coral Gables?

A. It does not exceed it for the first few years because of the fact that the levies now made on the refunding bonds plus the levies made under the mandatory writs are greater than the levy required under the proposed issue plus the refunding bonds and tax participation certificates that are now outstanding.

Q. The total requirements under the plan represented by Exhibit 43 are not as great as the proposed requirements under the refunding plan plus the requirements under the mandatory levies?

A. No, sir, they are not.

Q. Have you formulated that in a schedule to show what those figures would be?

A. I have formulated a schedule which shows the millage required for each year under the January 1, 1937, plan for refunding bonds and tax participation certificates now outstanding, which assumes the deduction from the existing required millages, the percentage which I have described as that which I think should come out to be applied toward the retirement of the $687,884.23 of bonds. Then, in a parallel column I have shown the millage required for the proposed issue of January 1, 1941; that is merely a transcript of the millages which appear in the

exhibit concerning which I have just testified; then there is a third parallel column which shows the total of those millages.

Mr. Berry:
I will offer this schedule as Defendants' Exhibit No. 44.

Mr. Adams:
We reserve the right to move to strike, and cross examine, at a later date.

The Master:
It is so ordered.

(Instrument marked, only, as Defendants' Exhibit No. 44.)

Q. Mr. Bradford, referring to Defendants' Exhibit 44, and the fourth column, as I understand you, that is the total millage requirements of the city to meet a complete refunding of the 1937 indebtedness, and that includes the refunding bonds now outstanding, and the bonds proposed to be issued under this plan which will refund the entire outstanding indebtedness of the city, other than perhaps for operations or purchase of property, which is not involved?

A. That's correct.

Q. Now, are the requirements in this fourth column as much as the proposed requirements of the City plus the mandatory levies which they are now making, as reflected in the exhibits?

A. They are not more than the total you have mentioned for the first two or three years; following that period, the mandatory writs, because of the retirement of the judgments, or by agreement, I don't know which it is, there, but at any rate the schedules of the City show that the amount of funds to be raised on the mandatory

writs begin to lessen after a period of some three or four years, and they soon lessen to a point where the millages shown in Column 4 slightly exceed the present total that you have enumerated.

Q. Now, from your examination of the City and from your experience as you detailed, do you think the City has the ability to pay the amounts set out in that fourth column as debt service?

Mr. Adams:

We object, as the witness has not qualified himself to testify as to the ability of the City of Coral Gables to pay taxes.

Mr. Berry:

Well, we undertook to qualify him, and he testified at some length on that the day before yesterday.

(Argument presented, off the record.)

The Master:

The objection is overruled; proceed.

(Question read to the witness.)

A. I do, Mr. Berry. As a matter of fact, I think it is interesting to note that the amount which the City would be required to actually collect in dollars for the first seventeen years of this arrangement in excess, over and above the amount which the January 1, 1937, plan requires, is less than the amount which the City is today contributing, according to the records which I have read, to the University of Miami, which is $25,000.00.

Q. Then in your opinion as an expert to the extent to which you have qualified yourself, you state there is a clear ability on the part of the City to meet this proposed schedule?

A. I do, sir.

Mr. Berry:
That's all.

Direct Examination.

By Mr. Gibson:

Q. Mr. Bradford, if the City would apply the funds that it has on hand at this time from taxes levied for debt service, appropriated to the bonds that the City has on hand but unissued, for the refunding of the unexchanged bonds under the '37 plan, and appropriated for retirement of special issues, if they would appropriate those funds to the service of the bonded indebtedness as set out in this schedule, it would greatly diminish the requirements you have set forth, would it not?

A. Yes, it would. The figures which I have as to those accumulations I could not say are up to date, but it is my impression that there is in excess of $20,000.00, or there will be on July 1st, in the fund which has been impounded for the interest on the $233,500 of bonds. And there is a sum which I believe is somewhere in the vicinity of 27 or 28 Thousand Dollars which is on hand for the payment on the mandatory writs. Those two figures, together, would approximately come to $47,000, which is more than the amount necessary to be collected under this arrangement for the first two years, even, so that if it was applied to the payment of the debt service of this issue, the result would be that there would be no levy required on these bonds for the first two years, and, on the other hand, if those funds were paid out on account of the debt, then there would be a smaller debt to amortize, and the result, of course, would be an easier amortization schedule.

Q. In other words, these schedules resolve—these schedules ignore everything except the levy of fresh taxes to support them?

A. That's correct, sir.

Mr. Gibson:
That's all.

Mr. Berry:
We submit him for cross examination.

Mr. Adams:
We reserve the cross examination and the right to move to strike the testimony at a later time.

The Master:
It is so ordered.

(Witness excused.)

1250 TOWNSEND WAINWRIGHT was recalled as a witness on behalf of the objecting creditors, and being still under oath, testified as follows:

Direct Examination.

By Mr. Berry:
Q. This is Mr. Wainwright?
A. Yes, sir.
Q. I believe you testified in this case on June 25th, the day before yesterday?
A. Yes, sir; that's correct.
Q. And at that time, and at our request, you have stated what you thought was the ability of the City to pay an issue of 4% bonds.
A. Yes, sir, I did.
Q. Have you now set up an issue of 4% bonds in the amount of $687,884.23?
A. Yes, sir, I prepared a schedule (producing same).

Mr. Berry:
We offer this schedule as Exhibit 45.

Mr. Adams:
We reserve the right to move to strike, and cross examine as to this exhibit, later.

The Master:
It is so ordered.

(Instrument marked, only, as Defendants' Exhibit No. 45.)

Q. Mr. Wainwright, the exhibit consists of five columns. Now, what is the first column on the left?

A. The first column on the left is the fiscal year of the City, starting with the next succeeding fiscal year ending June 30, 1942, and continuing to 1977.

Q. Now, according to the caption, these are serial bonds, with so much being retired each year; is that correct?

A. That's correct.

Q. Now, what does column No. 3, under the heading of "Principal", represent?

A. That is merely the amount of principal that would be due and retired under this issue each year.

Q. That's the annual retirement?

A. That's the annual retirement of principal, and the column to the left of that, the second column, "outstanding bonds", reflects that retirement.

Q. In other words, the amount in the third column is deducted from the equivalent figure in Column 2 each time?

A. That's correct, yes.

Q. Now the Column 4, under the heading "interest", what is that?

A. Column 4 is the interest at the rate of 4% on the amount shown in Column 2 in each year, which presumes that the principal to be retired in the second half of the fiscal year would be retired, so that there would be two interest coupons due of $20.00 each, per Thousand, during the year, and as bonds are retired the interest declines, to the extent of the interest of the bonds retired.

Q. And under this plan the retirement of principal proportionately increases as the amount declines?

A. Yes; the schedule is set up on the basis that I mentioned in my testimony given the day before yesterday of a level annual total payment of approximately $36,000.00-odd dollars.

Q. Now, the fifth column is the total. That is simply an addition of Columns 3 and 4, is it not?

A. That's correct.

Q. Now, Mr. Wainwright, have you figured the millages that would be required on the assessable value of Coral Gables, as reflected in Plaintiff's Exhibit 27, showing their proposed assessments?

A. I have examined Exhibit 27 throughout, yes. Which millage do you mean? There are two millages shown here, the millage for the first series of bonds issued under the Resolution of January 1, 1937, that particular issue, and then the second series which came along later.

Q. What I'm asking you, though, is have you figured the millages necessary to pay principal and interest on the $687,884.23 of bonds shown in Exhibit 45 which you just filed?

A. No, sir, I have not. This exhibit, as I mentioned in my previous testimony, was merely to show as a possible means of financing the outstanding unrefunded indebtedness, that it was within the demonstrated taxpaying ability of the community to do to this extent, that they are now and have been raising an amount of money in excess of this $36,000 shown here out of the millages that are now being levied to pay the bonds of the issue of January 1,

1937, both series, and the mandatory levies. In other words, from the audits of the past two years it is indicated that approximately $34,000 in each year has been paid on account of the mandatory levies from the millages that have been placed for those levies, and have also raised and are now reserving, interest on some bonds of the 1937 refunding issue which have not been issued, and the sum of the two amounts is $41,000, or $5,000 more than this $36,000 shown. I haven't actually reduced that to a millage; it is not a particularly difficult matter.

Q. To reduce that to millage is a mere computation in arithmetic, isn't it?

A. Yes, it is a very simple matter. And this doesn't presuppose the theory so far as millages here are concerned, in theories as to increase or decrease in future valuations; it is simply based on the contention that at least Coral Gables gets no worse, and if it gets better, so much to the good, as to its present ability to raise revenue; in other words, the theory that I have gone on in nearly every case as to refinancing a community, and as to its ability to pay in the future, is pretty simple. If it is demonstrated that for some time it can raise so much money to pay its debts, I assume that it can at least continue to raise that unless there is some economic factor in the picture that indicates that the town is going to go down hill, and I certainly don't see that here, so that my feeling is that simply as a demonstration of its ability, its own figures show its ability to meet such an issue as this, with less money than they are actually raising money to pay the indebtedness they now have outstanding.

Q. Mr. Wainwright, Mr. Bradford today introduced Defendants' Exhibit 43, of which I will now hand you a copy, and ask if you are familiar with that exhibit?

A. Yes, sir, I am.

Q. The total amount of bonds in your exhibit and Exhibit 43 are the same, are they not, in the beginning?

A. Yes, sir, they are; they are both based on the amount of the same calculation of the unrefunded indebtedness.

Q. The rate of interest in the two exhibits is different, or reflects a different rate of interest, proposed to be paid on the proposed bonds?

A. Yes, sir. In my exhibit it is a flat rate of 4% to be paid during the life of the issue, and here it starts at three and goes up to five.

Q. I believe you testified on the 25th that the actual interest requirements under your exhibit would be less than the interest requirements under Mr. Bradford's exhibit?

A. Over the life of the issue, if it is assumed that this exact schedule of retirement is followed.

Q. That being true, would the millages set up in Exhibit 43 be sufficient to retire the bonds under your plan, though not necessarily being levied in the years as shown there? In other words, a re-arrangement of the millages for that year?

A. No, sir, they would not, because this plan shown on Exhibit 43 contemplates raising a lesser amount of money to meet the requirements of the bonds. In other words, you have here, as opposed to this Exhibit 45, you have $20,000, starting out in the year 1941-42 in Mr. Bradford's Exhibit 43, as compared to $36,000 in this other exhibit, which is No. 45, as I understand.

Q. Well, in both exhibits you are paying back only principal and interest; you are paying back principal and paying interest on the unpaid portion of the debt; isn't that true?

A. That's correct, yes; you are paying the same amount of principal.

Q. And under your plan you pay less interest than you do under the Bradford plan?

A. Over the life of the issue, assuming that Coral Gables should retire its bonds in accordance with this Exhibit 43, yes.

Q. Then it would take less money—the expense to Coral Gables would be less under the Exhibit 43 plan than under the Exhibit 45 plan?

A. No, sir, not over the life of the issue.

Q. Well, why not?

A. Because the average rate of interest, or the total amount of interest under Exhibit 43 would exceed that under this level serial payment shown in Exhibit 45.

Q. Then the Exhibit 45 will cost the City actually less than the Exhibit 43, if that plan was adopted?

A. Yes, sir, it would. Again, making the assumption, that the retirement schedule—that the growth would follow that shown, and which is based on the City's exhibit. In other words, exactly the same valuations which is shown on a 3½% estimated growth, and that that would continue to maintain, these levies would be continued, and the levies below, as shown; in other words, that the bonds shown in Column 5 of Exhibit 43 would actually be followed throughout the life of the debt. The reason I qualify that is that it is possible that the growth of Coral Gables' valuations might be greater than that shown in Column 6 of this exhibit, which was taken from the Exhibit 27, in which event, on these millages, a greater amount would be retired.

Q. But what I'm getting at, the millages in Exhibit 43, assuming the assessed value as it is therein set up would be sufficient ultimately to retire the 4% bonds though they might have to be adjusted in the earlier years on account of the larger retirements.

A. They would, but not at the same maturity schedule. If this maturity schedule were changed to something approximating the maturity schedule of Exhibit 43, that is, the maturity schedule of Exhibit 45, at a flat 4% rate, these millages would be sufficient; more than sufficient.

Q. Well, from your familiarity of Coral Gables, and in view of your testimony the other day, and from your knowledge of municipal affairs, would you say that Coral

Gables has the ability to pay the bonds proposed to be issued under either of those plans if they were issued?

A. Yes, sir, they have that ability very definitely, in my opinion, because they have raised and are raising an amount of money sufficient to do it out of the existing millages. In other words, the proof of the pudding is in the eating. They have demonstrated that ability; and they have had that ability for some time.

Q. Would you say that they had that ability as early as February of 1940?

A. Yes, sir, they have had that ability. That doesn't mean, however, that the rate of interest on Exhibit 45 would necessarily be the same. In other words, you had an ability to issue bonds at that time at a rate of interest within the legal rate.

Q. Now, are you familiar with the municipal bond market in the United States? Is that part of your work, to keep up with that?

A. Yes, sir; I believe I have already testified to that.

Q. And does the rate of interest required to sell bonds remain constant, or does it fluctuate from time to time?

A. It fluctuates from time to time.

Q. And assuming, now, from your investigation of Coral Gables which you have described, if they had issued a serial bond of the approximate maturities of either of these exhibits, 43 and 45, but agreeing to pay whatever interest requirement was current at the time, could, in your opinion, that bond issue have been readily sold to the public or a dealer?

A. May I ask the period of time you refer to?

Q. Beginning in February, 1940, up to the present time.

A. For practically all of that period I would say "yes". There may have been some market fluctuation there during the German advances into the low countries, or something of that kind. I can't recall exactly, but there was one period during that time when the market was down, but it was a very short period, and the market for prac-

tically the entire period was certainly of a nature which would make it possible for Coral Gables to float an issue of bonds for which they could receive par.

Q. That was one of these down hill things you mentioned a while ago, on a short hill, wasn't it?

A. In the market it was very short. I think, as I recall it, the advance of Germany into Holland and Belgium and France and Luxenburg scared the daylights out of the municipal bond market for a while, and bonds were sold and the market was depressed, but they shortly got over their fright and the market recovered; it didn't last.

Q. Well, you would definitely classify that as an abnormal period, and during the normal periods of times I have indicated, your answer stands?

A. Oh, yes; that was a purely temporary disturbance in the market, which had no bearing on the general market except for a very short time.

Mr. Berry:

We tender Mr. Wainwright for cross examination.

Mr. Adams:

We reserve the right of cross examination until some time later.

The Master:

It is so ordered.

(Witness excused.)

1260 VINCENT M. DOHERTY was called as a witness on behalf of the objecting creditors, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Gibson:

Q. Will you state your name and address and business, please, sir?

A. Vincent M. Doherty; municipal bonds. My business address is the Harvey Building, West Palm Beach. Do you want my residence, too?

Q. No. Mr. Doherty, have you engaged in the business of buying and selling of municipal bonds?

A. I have.

Q. For how many years?

A. Well, my total experience dates back twenty-five years.

Q. Does your business require you to be acquainted with the municipal bond market?

A. It does.

Q. And such factors as the ability of the market to absorb an issue of bonds, and the prices thereof, and so forth?

A. It does.

Q. Has your business required you to make a survey of the economic conditions of a taxing unit for the purposes of determining the intrinsic value of the bonds to be issued by that taxing unit?

A. It has.

Q. And for the purpose of determining a fair price therefor?

A. Yes.

Q. Have you made such surveys?

A. I have.

Q. Have any bonds ever been purchased by financial centers or banking houses of financial centers based on your serveys?

A. They have.

Q. Could you give us the aggregate amount in dollars of approximately how many bonds have been so purchased, based upon your surveys, during your career?

A. Well, let's see; oh, probably—based solely on my surveys, probably 10 or 15—10 or 15 Million, perhaps but I actually purchased a good many more bonds than that.

Q. Well, place it this way; based upon your recommendations, and reviews, and surveys made by someone else.

A. I should say probably during the time I have been in the business, probably 10 or 15 Millions.

Q. What are the aggregate bonds purchased by you, do you think, during the time you have been in business?

A. Probably 75 Million, or something in that neighborhood.

Q. How many bonds have you purchased in the State of Florida?

A. You mean new issues?

Q. Yes, sir.

A. I would say probably between 20 and 25 Millions. That's a rough guess. I have no independent recollection of exactly what issues.

Q. Are you generally what we will say, market-wise, and familiar with the financial condition of the City of Coral Gables?

A. Market-wise?

Q. Yes, sir.

A. Yes, sir.

Q. Would you say that the financial world, or the financial fraternity in general is familiar with the market-wise financial condition of the City of Coral Gables?

A. Oh, yes, I would say so.

Q. Now, when we say the market-wise financial condition, we mean, do we not, those essential factors that go to the intrinsic values and the safety of a bond to be issued?

A. That's correct.

Q. It has been testified, Mr. Doherty, in this case, that the City of Coral Gables has at this time approximately a $25,000,000. assessed valuation, and are levying approximately an over-all tax of 22 mills, of which about 8-1/2 mills are debt service. That 8-1/2 mills is calculated to service a number of judgments for which peremptory writs of levy have been issued; and the refunding issue of 1937. That portion of the debt service levy allocated to the mandatory writs is about a Million and a Half. If we ignore the mandatory writs, and put out a supplementary issue of bonds to take care of all the unrefunded bonds plus the mandatory writs—

A. Now, wait a minute; you said you are going to leave out the mandatory writs.

Q. If we eliminate the levy appropriated to the mandatory writs.

The Master:

Read that, as amended.

(Thereupon, the following was read by the Reporter: "If we eliminate the levy appropriated to the mandatory writs, and put out a supplementary issue of bonds to take care of all the unrefunded bonds plus the mandatory writs—").

Q. (Continuing)—the supplementary issue will amount to an additional $454,000.00 worth of bonds to be issued; that is, on top of the $4,200,000. of 1937 general obligation bonds that are out.

A. Yes.

Q. In your opinion could a 4% serial or term issue of bonds in the amount of $454,000. be disposed of at this time for par?

A. If I understand it, the supplemental issue would clean up everything that hasn't been refunded, including these mandatory writs; is that correct?

Q. That is correct.

A. What kind of a levy would there be made under those circumstances? What I mean is, would it change the present levy materially?

A. It would not change the present, materially. In no event would it add over a mill and a half to two mills; and it wouldn't add that much, but in no event would it add that much. But assuming that it would add a mill and a half to the present debt service levy, could such an issue of bonds be sold at par at 4%?

A. I will say this, that is such a supplemental issue of bonds didn't add any more than the millage that you mention, and cleaned up all the loose ends of the City of Coral Gables bonding situation, and under present market conditions, I am inclined to think that you could sell that many bonds, 4% bonds, for clos to par, either one side or the other of it; that is, if they were not callable bonds.

Q. You mean by that you might get very close to par, or you might get a premium?

A. I think it is conceivable, if they were not callable bonds, the way the market seems to be headed right now, you might possibly get a premium for them.

Q. Well, now, Mr. Doherty, do you know of your own knowledge of any such supplementary issues being put out by any of the Florida cities lately?

A. Well, West Palm Beach did something very similar to that. They put through a clean-up program, so to speak, and issued 3½% bonds.

Q. That was through bankruptcy, was it?

A. Yes; that's right.

Q. Now, Mr. Doherty—

Mr. Adams:

We object, and move to strike that; we object to the question and move to strike the answer of the witness as being incompetent and irrelevant to any issue in this law suit, and having no bearing upon it.

The Master:

The objection is overruled, and the motion is denied.

Q. Now, Mr. Doherty, tell us how those bonds have reacted, market-wise?

A. Well, those bonds, I believe, have sold as high as around 101. The lowest that I have seen them for the last several months, that is, from a bid side, was 95, and I am inclined to think that the bid side is probably around 98 or 99. The market has been moving and showing signs of life. That may not be absolutely correct; it may be higher than that at the minute; I don't know.

Q. Do you know whether or not such a supplemental, and to use your language, clean-up issue, was effectuated in the case of the Sanford bankruptcy?

A. I understand that Sanford did have such a clean-up issue. I am not entirely familiar with it, but I understand they did clean up the loose ends in that manner.

Q. After that was effectuated, did the previously issued bonds raise or decrease in market value?

A. Well, in all cases where they clean up, and put their house in order, the bonds as a rule move up.

Q. In other words, such a supplemental issue market-wise, and when we say market-wise we mean what the bond is worth to the holder?

A. Yes.

Q. Such a supplemental issue market-wise does not work to the prejudice of the present holders, but increases the value of his holding? Is that correct?

A. It has worked that way in cases that I know of.

Q. Is not the same situation true of the City of Sarasota, in bankruptcy?

A. Yes; they put out a similar issue there, and their bonds have moved up. In other words, it amounts to this, that as long as those things are over-hanging, and there are press notices in the papers of this, that and the other thing, litigation, and what not, that disturbs the mind of the bond buyer, the investing public, and when he finally hears that they have cleaned house and put their house in order and put and end to all that litigation why it naturally puts the bonds of that place on a more even keel, and people feel better about them.

Q. Now, Mr. Doherty, you say that an issue of 4% bonds could be sold at par?

A. That's just my opinion.

Q. I understand. I'm asking you for your opinion. Taking in consideration the fact that the City of Coral Gables is in bankruptcy at this time, do you still say that?

A. Well, the term bankruptcy, as applied to these situations in municipalities with regard to their debt, doesn't infer the disastrous thought that it does in many other cases. It is more or less a necessity. Therefore—well, rather, more of an expedient than it is a necessity; the law is there which permits them to do that, and in protecting, or attempting to protect the taxpayer, and what not, they usually go through those motions, but so far as the bankruptcy end of it is concerned, that's discounted. I mean, nobody pays any serious attention to that; certainly not in Coral Gables.

Q. Do you mean to say that in Coral Gables the fact that the City was in bankruptcy would not affect the sale of these bonds, because the Coral Gables bankruptcy is outstandingly discounted?

A. I would say that it was discounted, and outstanding to this effect, that I don't think that the bond-buying public or the bond fraternity believes that Coral Gables couldn't pay. I don't think that they are at all frightened

by the term "bankruptcy". I think that they regard it purely as a matter of routine procedure gone through to arrive at an end, and they resort to all the resources of the Courts to give the City the best deal. I don't think anybody pays any attention to it so far as being afraid of the bonds.

Q. Would you say that it is the open, notorious, general accepted view of the bond world that the City of Coral Gables bankruptcy is a procedure of expediency rather than a procedure of necessity?

Mr. Adams:

We object to the question as being leading and involving a conclusion.

The Master:

I think the question is objectionable, Mr. Gibson. The objection is sustained.

Q. Will you tell us, please, what is the open, general, notorious and accepted view of the bond farternity with regards to the Coral Gables bankruptcy?

Mr. Adams:

We object to that as being incompetent and irrelevant to the issues of law and equity involved in this law suit.

Mr. Gibson:

I don't think it is incompetent, Your Honor, and I don't think it is irrelevant for this reason—

The Master:

If the witness can answer the question, let him answer it.

A. I will say this, that I don't think that anybody that has been following the situation believes that it is neces-

sary, or was necessary for Coral Gables to plead bankruptcy. I think, as I said before, that they regard it as a certain routine that's gone through to arrive at a final conclusion so there will be no more arguments about it, and I don't think that it will affect the price of the bonds one way or the other.

Q. It is your view, then, that a competent, business-like, scientific review of the financial linen of the City of Coral Gables could proffer a solution without a resort to bankruptcy? Is that correct?

Mr. Adams:

We object to the question as being leading, and incompetent.

The Master:

I don't think that question is proper, Mr. Gibson. The witness has given the answer to your question; he has given the meat to the coconut, that he doesn't think the bankruptcy would affect the sale of the bonds.

Mr. Gibson:

What I'm trying to bring out, Your Honor, is that the general view is that if somebody down here in Coral Gables sat down and knew their business, they could sit down and not resort to bankruptcy.

The Master:

I don't think that's a material question in this case.

Q. Now, Mr. Doherty, I hand you herewith Defendants' Exhibit No. 43, and ask you to examine the same, with this explanation, that the figures in Column No. 2 are the bonds that would be issued for this supplemental issue; Now, the aggregate of these bonds contemplates the cancellation of the bonds now held by the City that have been unissued but that were validated—undelivered, but

that were issued for the purpose of refunding the present outstanding indebtedness. Column No. 3 is the interest rates proposed on the supplemental issue, which are the same interest rates as the 1937. Column No. 4 is simply the calculation of the interest requirements. Column 6 is the anticipated assessed valuation of the City as proffered by the City. You understand that?

A. Yes. In other words, that's the City's idea of the way it might increase; is that correct?

Q. That's correct. Column No. 7 is the additional millage requirement—

A. Just let me ask you something. Additional, after you strike off that mill and a half you have got on the millage now for mandatory writs?

Q. I will get to that in just a minute.

A. I see.

Q. Column No. 7 is the additional millage requirement of the City after you strike off the mill and a half for the mandatory writs, but ignoring the funds on hand to be paid on the mandatory writs and the funds on hand to be paid on interest of the existing bonds; ignoring those factors altogether.

A. You mean the existing bonds, unexchanged?

Q. That's right. This is simply the new fresh taxes that would have to be levied in the event the City didn't have enough.

A. Yes.

Q. I will ask you to review that schedule and tell us whether or not in your opinion the City could maintain those bonds in a current position.

Mr. Adams:

We object to the question; the witness has not qualified himself as an expert on the ability of a city to pay taxes.

Mr. Gibson:

I think that I sufficiently qualified him, Your Honor.

The Master:

The objection is overruled.

A. What has the percentage of tax collections of the City been?

Q. The percentage of tax collections, as shown in evidence in this case, is 80.

A. And how long a period is that over? Several years?

Q. That's for, I have forgotten how many years past, but for a fair number of years in the past.

A. On the present millage that is levied now they have collected 80%, and they have been able to service the bonds they have outstanding; that is correct, isn't it?

Q. That's correct.

A. And apparently had some left over.

Q. I might explain to you that the present millage is greater than the millage—the aggregate present millage is greater than that aggregate millage, but that is ignored.

A. I can say that it is. I would say, looking at this, that your interest here being the same as the present bonds, and your millage isn't going to be, certainly, any greater than it is now, and these assessed valuations here certainly look as though over a period of time, unless the whole United States goes backwards, it ought to be duck soup for them to be realized. I would say that these bonds could be issued and maintained currently, and the whole bond structure of the City would be healthy; that is, taking into consideration the location of Coral Gables and the character of the community as a whole.

Q. Generally speaking, Mr. Doherty, is, we will say, 23 mills for the aggregate operation and debt service levy on a fair tax roll considered as an excessive levy?

Mr. Adams:

We object to the witness expressing an opinion on the question of over-all millage for city taxation, as not having qualified.

The Master:

The objection is overruled.

A. Why, I don't think that 23 mills is a high tax rate over-all, at all.

Q. There are many refunded situations greater than that that you know of?

A. Oh, yes.

Mr. Gibson:

I tender the witness for cross examination.

Mr. Adams:

We want to ask just one question, and reserve further cross examination.—Mr. Doherty, do you know the current market on Coral Gables refunding bonds of the issue of January 1, 1937?

A. A day or two ago—I didn't check it carefully yesterday nor today, but the bid was about 91 and a fraction. That was the bid for Coral Gables bonds; and I shouldn't be surprised that it may have been 92, because the market has been pretty strong. I mean, in spots. There may have been other bids. The bids that I saw may have been where there were commissions knocked off in between before they finally got to the resting place.

Mr. Adams:

That's all.

By Mr. Gibson:

Q. Can you give us the offered side of the market for the same period you have just testified about?

A. Well, there have been mighty few bonds offered; certainly not under 93, and possibly 94. Frankly, I can't recall right now seeing any—I don't recall any definite offering of bonds. As a matter of fact, there has been a drying-up of all bond offerings recently as compared to what there used to be. I don't know of any Coral Gables bond—wait a minute; I saw some about a week ago, at about 93, I think it was, but the market has moved up since then, and they possibly may have moved their offering if they didn't sell; they may have moved their asking price up.

Mr. Gibson:

That's all.

Mr. Adams:

We renew the reservation previously made.

The Master:

Further cross examination and the right to file a motion to strike is reserved.

(Witness excused.)

1274 WALLACE D. BRADFORD was recalled on behalf of the objecting creditors, and being still under oath, testified as follows:

Direct Examination.

By Mr. Berry:

Q. Mr. Bradford, you have been on the stand before today?

A. Yes, sir.

Q. Since you were on the stand, Mr. Wainwright has again testified about the salability of a proposed issue of $687,884.23 principal amount of 4% serial bonds as a means of financing the unrefunded indebtedness, which is Defendants' Exhibit 45, a schedule. Have you seen that schedule before?

A. Yes, sir.

Q. In your opinion can that bond issue be sold?

A. It can be sold on today's market, yes, sir.

Q. At what price?

A. I think it will bring par or better.

Q. Without the millage being calculated, do you know, roughly, what the millage requirements under that suggestion would be?

A. Well, of course, the millage requirement would vary from year to year, based on the estimate of assessed value totals which I assume to be correct as they are set out in the City's Exhibit No. 27, but for the year 1941-42, for example, assuming a 100% collection, there would be a millage of approximately 1.2 on the assessed valuation of $25,595,630.00. Now, going to the last year as an opposite or an extreme, on an assessed valuation of $68,000,000.00-odd, the levy would be on a millage of approximately .48, I would estimate.

Q. In your opinion, from the experience you have had, is Coral Gables able to make that levy and pay that issue of proposed 4% bonds as set out in that exhibit?

A. Yes, I think that in addition to the amount which would have to be raised for the servicing of the presently outstanding refunding bonds and tax participation certificates under the 1937 plan, that the City could raise $36,-000. odd dollars, as would be required by this issue.

Mr. Berry:

That's all.

By Mr. Gibson:

Q. Mr. Bradford, I wish you would explain to the Court the mechanics of handling a situation where a city gets more than par for its bonds when it puts them out on the market.

A. Well, there are more than one ways of doing that. In some instances the city will sell an issue of bonds for more than par, and the premium is used by the city to increase its future sinking fund for the issue. I have known of that being done. In a great many instances currently, however, the issue provides that in case there is a premium to be bid for the bonds, that the amount of bonds to be issued will be reduced accordingly, so that the net result is that if the city is to raise $1,000,000., that there will be $1,000,000. bid for the smaller issue of bonds than $1,000,000.00.

Q. Now, don't they sometimes, instead of bidding for bonds on a price basis, that is to say, I will bid you $998.00 for a bond, or $1,001.00 or $1,009.00 for a bond or $1,010.00 for a bond, don't they address their bids to the interest rate?

A. Yes, that is quite often the case, but in this instance I was discussing what was on this schedule, which is a 4% serial issue.

Q. In other words, the City could offer bonds and ask as to interest rates, couldn't they?

A. Yes; but there is still another method which is employed at times, and that is, that the bonds will be offered with the stipulation that the interest cost to the city will not exceed a certain figure. In that way it is possible, let us say, to bring out two issues so that if it seems advisable market-wise, one issue might be, let us say, 3½% non-callable issue, and the remaining part of that issue might be 4¼% callable bonds, so that the net result of

the cost to the city will not exceed an average interest cost of a certain figure.

Q. Well, now, will you explain to the Court—

(Question interrupted and off the record discussion had, and question not concluded.)

Q. Well, now, Mr. Bradford, do you think that this issue of 4% bonds would be readily salable, or do you think it would be hard to put it across?

A. I think they would be readily salable.

Q. Are you familiar with the West Palm Beach situation?

A. I can't say that I am familiar with it at the moment, Mr. Gibson. I was at one time, of course, because I was connected with the refunding of the major portion of the debt.

Q. Well, Mr. Bradford, do you think that the fact that the City of Coral Gables is now in bankruptcy would affect the sale of these bonds?

A. No, sir, I don't think so.

Q. Why do you say that?

A. Because from my knowledge of the attitude of those in the market who handle such bonds as Coral Gables, they have very greatly discounted this legal proceeding. They seem to feel that Coral Gables is flourishing, and is well able to pay its debts, and that this proceeding is largely a matter of a technical legal position in an attempt to force the minority creditors to accept the same plan that was offered in 1937.

Mr. Adams:

We move to strike the answer of the witness as being incompetent, immaterial, and hearsay testimony of impressions of people, and under no rules of evidence admissible.

Mr. Gibson:
I think I can cure that with one other question.

The Master:
The motion will be granted, and you can ask your other question.

Q. Mr. Bradford, will you tell us, please, what is the general, open, notorious viewpoint of the bond-buying fraternity, you might say, with regards to the Coral Gables proceeding?

Mr. Adams:
We renew our objection.

Q. (Continuing) And its effect or its possible effect on the ability of the City to sell the issue of bonds we have been discussing?

Mr. Adams:
I make the same motion to the present question.

The Master:
Let the witness answer it if he can.

A. I have discussed the Coral Gables—

Mr. Adams:
May we object to the witness stating hearsay testimony of his discussions.

The Master:
Let's see what he is going to say.

A. I have discussed the Coral Gables situation with dealers who handle bonds of the character of Coral

Gables, and it is the concensus of those dealers that Coral Gables is able to meet its present debt.

Mr. Adams:
We move to strike the answer on the previous grounds stated.

The Master:
The motion is denied.

Mr. Gibson:
We tender the witness for examination.

Mr. Adams:
We reserve the right to move to strike all the testimony, and to cross examine the witness, until a later date.

The Master:
It is so ordered.

(Witness excused.)

(At this time counsel for the objecting creditors announced they had no further witnesses to be produced at the present hearing, after which the following occurred):

Mr. Gibson:
Your Honor, speaking on behalf of Fiduciary Council, Inc., the holder of one of the Special Issues, and speaking with the authority of Jennings & Watts, representing Mr. Root, the holder of the other Special Issue, I wish to make this announcement to the Court. During this session of hearings we have taken into consideration the plan offered by Mr. Bradford's testimony and that proffered by Mr. Wainwright's testimony. Of course, if the City should follow the procedure outlined by Mr. Wainwright,

which is to sell bonds and produce cash, the holders of these special issues would have no alternative but to accept cash. That same situation, however, would not obtain as to the plan suggested by Mr. Bradford. Now, without in the slightest waiving any of the rights accruing by reason of the special issues, and in no manner abandoning their position with regard to the special issues, these two holders of special issues, in an effort to cooperate with all parties to these proceedings, and in an effort to work out a solution of the issues in this case, and notwithstanding the loss it would cost them market-wise, if the City would accept, or if the Master would approve, and if it becomes definite that an issue of bonds would be issued along the lines of those suggested by Mr. Bradford, then at that time and under those circumstances the holders of the special issues will exchange their issues for such bonds. Now, I have used acceptance by the city and approved by the Master, because, as I understand the situation, the creditors have a right to show that the City can resolve its troubles by the adoption of a plan causing less sacrifice on the part of the creditors and still within the paying ability of the City, and if the Master becomes convinced of the equity and fairness of such a settlement, the Master can recommend that the plan—that the Petition be modified to the extent of adopting such a plan to work out the unrefunded indebtedness, in which event the City must accept it. Now, I say the words "must accept it"; they must accept it or it can't be effectuated, but if they don't accept it, then their petition is dismissed. That's why I have used the words "approved by the Master and accepted by the City".

The Master:

Are there any other matters to come before me at this time?

Mr. Adams:

We move to strike the statement of counsel from the record of the case, and in so moving state that we do not agree with any of the conclusions of law or fact stated by counsel.

The Master:

The motion is denied.

Mr. Berry:

I would like to add, if the Court please, that under the conditions recited by Mr. Gibson just previously, that if legal bonds are issued under either of the plans in Exhibits 35 and Defendants' Exhibit 43, that the American National Bank of Nashville will be glad to exchange the indebtedness which it holds for the bonds under either of those suggestions.

Mr. Lea:

I have just been authorized by Mr. Root to accept either one of them, reserving the right, however, if the thing doesn't go through, that we are going to contend at the end that the whole business is out of Court. We are not waiving any of our legal rights if they are not accepted—if our offer is not accepted to take the bonds.

Mr. Redfearn:

May it please the Court, we renew our objections on the same grounds to Mr. Berry's statement and Mr. Lea's statement, and on the further ground the statements are irrelevant and immaterial in the record, they serve no purpose except to clutter up the record and extend its size; that it is seeking to inject an offer of settlement in the case at this time which is improper to go in the record, and which has not been raised by any of the pleadings or any of the evidence heretofore offered which would auth-

orize statements of that kind to go in the record to the higher Court.

The Master:
The objection is overruled.—Mr. Reporter, note that we now adjourn to August 5th, 1941, at 10:00 o'clock A. M. at the office of the Master.

(Hearing adjourned at 12:55 P. M., June 27, 1941.)

In the United States District Court in and for the Southern District of Florida. Miami Division.

In the Matter of
The City of Coral Gables, Florida.
In Bankruptcy No. 1867-M.

This Cause came on for further hearing before the Honorable F. M. Hudson, Special Master herein, at 10:00 o'clock A. M., on the 5th day of August, A. D. 1941, at the offices of Hudson & Cason, Seybold Building, Miami, Florida.

There was present at said hearing on behalf of the Petitioner, the City of Coral Gables, Mr. E. L. Semple, City Attorney; and Messrs. Morton B. Adams, D. H. Redfearn and Ira C. Haycock, of counsel for Petitioner. There was also present on behalf of objecting creditors, Mr. Edwin M. Clarke, of the law firm of Jennings & Watts, of Jacksonville, Florida; Mr. F. A. Berry, of the law firm of Bass, Berry & Simms, of Nashville, Tennessee; Mr. Joseph P. Lea, Jr., of Orlando, Florida; Mr. S. O. Carson, of St. Petersburg, Florida; Mr. Miller Walton, of Miami, Florida; and Mr. W. Terry Gibson, of West Palm Beach, Florida. Mr. Miller Walton appeared at this hearing for the first time, as one of counsel for Ed. C. Wright & Co., one of the objecting creditors herein.

Thereupon, the following proceedings were had:

The first matter to be taken under consideration was the Motion of Petitioner, filed before the Master on July 25, 1941, to Strike the testimony of witnesses produced on behalf of the objecting creditors at the last hearings held in this cause, during the course of the presentation of which matter argument was presented by counsel for the Petitioner, at the conclusion of which the following occurred:

The Master:
Anything further?

Mr. Adams:
That's all we have to say.

The Master:
Well, gentlemen, I don't care to hear from the other side at this time. In the first place, I think it is my duty as Master to present a complete record to the Court. For that reason I shall not grant the motion to strike any portion of the testimony that has been offered, and thereby cut off the City of Coral Gables from cross examination. There is one other reason for overruling the motion, and that is that some of this testimony which the motion proposes to strike has evidently been aimed in support of the contention that the plan is not fair and equitable, and without entertaining any opinion as to whether that is right or wrong, I think that makes it necessary to allow the testimony to remain in the record. I do express the opinion that the Court has no power to adopt a substitute plan, but it seems to be unquestionable that the Court has power to make its order conditional and give the Petitioner an opportunity to present a modified plan; and, without intimating any opinion as to whether that will be necessary in this case, I recognize the fact that the

law permits such a course, and for that reason the testimony ought to remain in the record, and the motion is overruled.

The next proceedings had were as follows:

Mr. Adams:

The City propounded certain interrogatories to the American National Bank and to Ed. C. Wright & Co. Under the rules of civil procedure, we all considered that the objections which the bank and Wright filed to those interrogatories should properly go to the Court, and they were presented to the Court on yesterday afternoon. Judge Holland, after hearing both sides, expressed the opinion that the matter could be better handled by you as Special Master, and instructed us to prepare an order, since there was some doubt about the sufficiency of the prior reference to cover this question of objections to interrogatories, a proper order, referring specifically the objections to the interrogatories to you. That order has not been presented. I drew one this morning which counsel have seen, and they say they think it will be all right. We might go into that now and argue that. We want to know what's going to be done about those interrogatories in the further proceedings. I don't know but what we might as well take those up now.

(At this time there was an interruption, for an off-the-record discussion concerning the production of certain objecting creditors' witnesses for the purpose of cross examination, after which the following was announced):

Mr. Adams:

If the Master please, the Petitioner does not care to cross examine Mr. Bradford, Mr. Wainwright and Mr. Manley, two of them who are in New York, and Mr. Bradford, who is here. Now, as to the others who are close by, Mr. Done-

hoo, I understand, will be here tomorrow, and we will be ready to go ahead with the examination of him. Mr. Doherty is, I believe, in West Palm Beach, and Mr. Roberts on the other side of the state, and we can get hold of him without any embarrassment. Now, there was not completed before, Mr. Shaw's study of the auditor Roberts' audit of the proofs of claim and consents. Mr. Shaw is now ready with his study of that audit, and further testimony regarding the proofs of claim and consents, and with the work of numbering and identifying those proofs of claim and consents; and then we have the matter of the argument of these exceptions to the interrogatories of the bank that we can take up this afternoon. Mr. Shaw tells me it will be one o'clock before his photostatic copies of some of the data he prepared on that audit will be ready.

The Master:

Do you want to go on with Mr. Shaw first, or take up the argument on the interrogatories?

Mr. Adams:

We would rather take up now the argument on the interrogatories because Mr. Shaw tells me the copies of the data are not ready that have to go in, but will be ready at one o'clock.

(At this time argument was presented by Mr. Berry, counsel for the American National Bank of Nashville; a recess was taken from 12:00 noon to 2:00 P. M., at which time Mr. Berry concluded his argument, which was responded to by Mr. Adams and Mr. Redfearn on behalf of the Petitioner. This argument was in reference to the Bank's interrogatories and objections, only.)

Mr. Redfearn:

* * * We think we are entitled to answers to these interrogatories (5 in number), and also to a Sixth Interrogatory which I would like to dictate now.

"Sixth Interrogatory: Do you hold as pledgee or other wise either any bonds, or coupons which have been removed from bonds heretofore issued by the City of Coral Gables, Florida?

If your answer is in the affirmative, then answer the following questions:

a. For whom do you hold said bonds or coupons, or both?

b. When did you obtain custody and control of said bonds or coupons, or both?

c. What contract in writing have you with the pledgor with reference to the holding of these bonds or coupons, or both?

d. What agreement have you, either orally or in writing, with Ed. C. Wright or Ed. C. Wright & Co. with reference to the disposition of such bonds or coupons, or both?

e. Do you represent any other creditor in this proceeding other than Ed. C. Wright or Ed. C. Wright & Co. and yourself? If so, give the name and address of each such creditor, together with a statement of the amount, class and character of the security held by such creditor. Attach thereto copies of the instrument or instruments in writing signed by Ed. C. Wright or Ed. C. Wright & Co. or such other creditors, showing the authority under which you hold any of such securities, and file with such list a

copy of the contract or agreement entered into between you and Ed. C. Wright or Ed. C. Wright & Co., or between you and such other creditors or creditors, and disclose all compensation to be received by you directly or indirectly by reason of co-operation with Ed. C. Wright or Ed. C. Wright & Co. or any other creditor in connection with this bankruptcy case.

f. Attach a copy of the collateral note on which the collateral of Ed. C. Wright or Ed. C. Wright & Co. is pledged.

g. Is there other collateral pledged to secure said note?

h. If so, what is the present par value and the market value of the other collateral pledged to secure said note?

i. Please show the face amount of the Coral Gables bonds and the coupons attached thereto which were on pledge with the American National Bank of Nashville by Ed. C. Wright or Ed. C. Wright & Co. and the time when they were released as collateral by the bank, if such release has been made.

The Master:

Mr. Berry, of course you object to the Sixth Interrogatory?

Mr. Berry:

Yes, sir.

The Master:

Mr. Berry's objections as to the First, Second, Third and Fourth interrogatories are overruled. His objections to Sub-paragraphs C and D of the Fifth interrogatory I will sustain; the objections to the remainder of the Fifth

interrogatory are overruled. The objections to the Sixth interrogatory are overruled.

(Further discussion on above matter, off the record.)

Mr. Berry:

I would like to put this statement in the record. The exceptions and objections to the interrogatories filed by the City of Coral Gables, and addressed to The American National Bank of Nashville, came on to be heard this 5th day of August, 1941, before the Special Master, upon the same being referred to him by the District Judge. On motion of the City of Coral Gables, an additional Interrogatory No. 6 was permitted to be filed and served on the attorney for the American National Bank, and it was agreed that the objections heretofore filed should apply to the said Sixth Interrogatory. After argument of counsel, the Master ruled that the American National Bank of Nashville should answer Interrogatories 1, 2, 3 and 4, and of Interrogatory 5, subdivisions A and B, but that subdivisions C and D of Interrogatory 5 were stricken out, and directed that Interrogatory No. 6, this day filed, be answered.

(Following this, argument was presented by Mr. Walton, on behalf of Ed. C. Wright & Co., after first having filed an Amendment to the Objections to the Interrogatories on behalf of Ed. C. Wright & Co., which argument was responded to by Messrs. Redfearn and Adams on behalf of the Petitioner, and closing arguments were made by Messrs. Walton and Lea.)

The Master:

The objections to Subparagraphs H and I of the Second Interrogatory are overruled. As to all other objections, that is, the objection to the First Interrogatory, the objection to the Second Interrogatory, subsections A to G,

inclusive, the objection to the Third Interrogatory, the objection to the Fourth Interrogatory, my ruling is reserved until such time as I rule on Mr. Wright's motion for an order approving a modification of the plan of composition as submitted by the debtor. I take the view that these interrogatories and objections are not material until that motion of Mr. Wright's becomes material, which I don't think it is at this time.

Mr. Walton:

Your Honor, do I understand correctly you are requiring answers to H and I of the Second Interrogatory?

The Master:

That's correct.

Mr. Walton:

Does Your Honor intend that that shall be limited for any particular time? I think Your Honor has the authority to limit the scope of the examination.

The Master:

I hadn't intended to, but overlooked to limit that to the time since the filing of the petition in bankruptcy.

Mr. Adams:

Let me point this out to Your Honor, that in Defendants' Exhibit 8 it appears that on October or November of 1937 Wright was negotiating with the City and sold to the City certain then past due bonds at a very high price, and we move that these questions go back to the effective date of the voluntary refunding plan, which the record shows was in September of 1937, at least.

The Master:

And when was the petition filed?

Mr. Adams:
The Petition was filed in June of 1940.

Mr. Carson:
If Your Honor please, he said the effective date of this plan; now, it is in the testimony, and Mr. Shaw has so testified, there was never any resolution passed when the effective date of this plan was to be. Now, if somebody will make a statement of what that date was, all right; then—

Mr. Adams:
The record shows that the second ordinance, modifying the original plan of composition to conform to the validation decree, was adopted—I can't give the exact date; I think it was September 4th; and that exchanges of bonds on the plan set up by Ordinance 269 and Ordinance 289 began immediately in September.

Mr. Walton:
I would like to show in the record that we believe that Your Honor should limit the answers to the time which has elapsed since the filing of the petition in bankruptcy, because to go back of that time would require an expensive audit of records of a bond broker who dealt in securities for his own account and for the account of others in large volumes. Also, because we believe any purchases or sales of securities prior to the time of filing the petition in bankruptcy are wholly immaterial to the matters before Your Honor. We would also like to have Your Honor limit that to the old securities, for this reason; as a bond broker, Mr. Wright has traded in the refunded securities for his own account and for others.

Mr. Adams:
We agree to the old securities, and—

Mr. Redfearn:

No. We are testing the equity of his plan, and the more we show he is profiting here, the more the Court will take into consideration whether his plan is equitable or not. He says it will take an expensive audit; it shouldn't, if he keeps his books on the various municipalities which he deals with.

Mr. Walton:

I submit, Your Honor, it should be limited to the unrefunded securities, and I think above all this ought to be limited to the time which has elapsed since the filing of the petition in bankruptcy. I think under Your Honor's ruling that's the only thing that is material.

The Master:

Well, I'll let that ruling stand, that it shall be from the time of the filing of the petition.

(Thereupon, at 5:30 P. M., a recess was taken until the following morning, August 6, 1941, at 10:00 A. M., at which time the hearing was resumed, the appearances of counsel being the same as on the previous day.)

1294 JOHN C. DONEHOO was recalled as a witness on behalf of the Objecting Creditors, and being still under oath, further testified as follows:

Direct Examination.

By Mr. Gibson:

Q. Mr. Donehoo, when you were last on the stand you gave some comparative values and information regarding the City of Coral Gables and other cities of Florida where a supplemental plan of refunding was resorted to, to clean up the unexchanged indebtedness. West Palm

Beach and Sanford, Florida, were the cities, as I recall it. At that time I think, however, that you dealt entirely with the city tax and assessment structure, and made no reference to the county assessment and tax burden, and at that time I think your testimony was of a general nature; that is to say, you weren't specific in dollars and cents with examples of how the tax worked out. Are you now prepared to tell us how these comparisons would work out in dollars and cents, including the county tax burden?

A. I am.

Q. Will you please tell the Court the result of your investigations of properties in these three cities in this regard?

A. Yes, sir. Previously I had gotten to the point of showing the amount of city tax which would be borne by a $5,000.00 bungalow and a $5,000.00 business property within the three cities, namely, Coral Gables, Sanford and West Palm Beach, by an adjustment of the assessed value according to a ratio having been determined by an analysis of different properties in the city to determine the level of particular types of property to true value of an overall level of all property in those three cities. I have done the same thing on the county, now, and here is the result for the three cities for the county tax. In Coral Gables, a $5,000. bungalow will pay $22.50 county taxes; in Sanford, $20.00; and in West Palm Beach, $25.12.

Q. Excuse me just a minute, Mr. Donehoo. Even at the risk of repeating, will you start over again and give the city, as well as the aggregate? With the Master's permission I would like to strike that so he will be less confused, and have him start over again.

A. Previously I testified that the amount paid on an average $5,000. bungalow in Coral Gables for city tax was $40.00; in Sanford, $69.75; in West Palm Beach, $56.00. I now offer that the county tax on those same properties in Coral Gables would be $22.50; in Sanford, $20.00; in West Palm Beach, $25.12. The total real estate tax burden

would thus be, in Coral Gables, $62.50; in Sanford, $89.75; in West Palm Beach, $81.12. By the same token, applied to a $5,000. business property, the result would be as previously testified; the city tax in Coral Gables would be $102.30; in Sanford, $139.50; in West Palm Beach, $158.10; The county tax in Coral Gables, would be $8.59; in Sanford, $65.88; in West Palm Beach, $69.84. The total real estate tax burden then is, Coral Gables, $190.89; Sanford, $205.38; West Palm Beach, $227.94.

Q. Mr. Donehoo, what is the schedule you are reading from or referring to?

A. It is a compilation arriving at the figures I just testified to.

Q. Does that represent an investigation that you have personally made?

A. Yes, it does.

Mr. Gibson:

We would like to introduce this schedule in testimony and mark it as an objecting creditors' exhibit.

Mr. Adams:

May I ask him a question preliminary to an objection?

The Master:

Yes.

By Mr. Adams:

Q. Mr. Donehoo, do I understand that the county tax rate has been adjusted to true value or to the same basis of assessment valuation as is used in the city in the three instances?

A. Oh, no, there has been no adjustment in the tax rate; the adjustment is in the assessed value.

Q. The adjustment is in the assessed value?

A. Yes, sir.

Q. To bring the county on the same basis as the city?

A. No, sir; to bring the county on the relative basis as shown by the study. The county assessment may be 15%, where the city assessment may be 90% or 93%.

Q. What about the relation of the county assessment in Dade County and the county assessment in the county Sanford is in?

A. It is contained in this schedule.

Q. Well, is that reduced to the same basis?

A. Not the same basis, but the indicated basis for the particular county, whatever that may be.

Q. What about Palm Beach County and Dade County?

A. The relationship is shown here. The county assessment ratio basis in Dade County is 25%, the relation of assessed value to true value. In Seminole, where Sanford is located, at 20%, and Palm Beach, where West Palm Beach is located, at 15%.

Q. Where did you get your information of this adjusted basis of assessment in the three counties?

A. By comparison of actual sale price against the assessed value there on the tax roll.

Q. Sales price of what?

A. Of property transferred with a recent reasonable period of time.

Q. That's another spot-check?

A. Yes, sir; a sampling process.

Q. A sampling process?

A. Yes, sir.

Q. How many pieces of property were involved in your sampling process?

A. Well, in some cases a hundred, and in some as low as ten or fifteen.

Q. And how many pieces of property appear on the assessment roll in those several counties?

A. I couldn't tell you that.

Q. Those are in the amount of 10 or 20 or 30,000 pieces?

A. Oh, yes.

Q. When was that check made?
A. Within the past three months.

Mr. Adams:
We object to the introduction of the exhibit and move to strike the testimony because the sketchiness of the study of the expert supporting the figures that he has.

The Master:
The objection is overruled; let the exhibit go in for what it's worth. That will be Defendants' Exhibit No. 46.

(Instrument admitted and marked in evidence as Defendants' Exhibit No. 46.)

By Mr. Gibson:
Q. Mr. Donehoo, I believe you stated, or used the words, "county tax rate" and your chart shows the term of "county taxes".
A. That's right.
Q. By "county taxes" you mean all taxes levied on the county roll, including all districts of various types?
A. Not drainage districts.
Q. Except drainage districts?
A. Yes, sir.

Mr. Gibson:
That's all.

Cross Examination.

By Mr. Adams:
Q. Mr. Donehoo, in your direct examination you testified as I recall it, that the residential—improved residential portion of the city was assessed at 99-plus per cent of its true value.
A. That's correct.

Q. You also testified criticizing a method of depreciation of properties used by the Board of Equalization in the depreciation of value of properties premised upon the age of the improvement.

A. I believe I testified I wouldn't do it that way; I didn't think it was the proper way.

Q. You wouldn't do it that way?

A. No, sir.

Q. Did you take into consideration in that testimony the effect upon the valuation of a residence resulting from obsolescence?

A. Oh, yes; obsolescence is an essential part of depreciation; it is one of two parts of depreciation.

Q. It is one of two parts of depreciation?

A. Yes, sir; one is deterioration, which is a physical loss; the other is depreciation, which is an economic loss. They are both forms of depreciation.

Q. They both go into depreciation?

A. Yes.

Q. So your comments about the basis of the depreciation of the property used by the Board of Equalization included obsolescence?

A. Well, I don't know if it did or not. I don't know how the question was phrased. If the term "depreciation" was used, then my answer would include it, but if it were explained that they were applying physical depreciation, then it was not included.

Q. Now, what roll is it of the City of Coral Gables that you consider has a 99%-plus basis of valuation on the improved property?

A. 1940.

Q. The 1940 roll?

A. Yes.

Q. So if there was any error or mistake of the City in applying depreciation at that time, it has resulted in a 100% valuation of the improved residential properties?

A. Over-all level, yes, sir; but over-all level includes all types of property; not only improved residential property but all types.

Q. You said, I believe, that the improved residential portion of the city is assessed at approximately 99-plus per cent.?

A. That's right.

Q. So that particular portion of the assessment is, according to your testimony, correct?

A. Over-all level of improved property.

Q. Of the improved residential portion?

A. That's right; yes.

Q. Now, you also testified that you were convinced that the business section is under-assessed. How long has it been since you have made any detailed inspection and study of the business houses in Coral Gables on Ponce de Leon Boulevard and Coral Way?

A. In 1939 Mr. Bowen and I made a brief analysis.

Q. Did you make any investigation of the properties themselves?

A. No, we didn't go into the properties other than to go by them, if that's what you mean. We were only considering land values at the time, and not improved values.

Q. Not improved values?

A. Yes, sir.

Q. You also stated that it would be purely an estimate, but I believe that the under-assessment of the business section is between 15 and 20%. What is that pure estimate based on?

A. Well, it is based on our discussion and analysis of the sales that had occurred in the business district prior to 1939, which led me to believe that under-assessment existed to that extent, but you can't place it at a definite point, but it is merely an opinion based on judgment supported by all the facts available.

Q. Well, later on in your testimony you said that the business properties in Coral Gables were assessed on the basis of 93% of its true value. Now, which do you mean?

A. No, I believe 93% applies to over-all value.

Q. You said, on Page 935, in response to the question: "Now, how about a $5,000.00 business property in each of the cities?" Answer: "In each of the cities, with the same manner of explanation, I find the ratio of business properties is about 93% in all of them, so I have used that factor. * * *"

A. Will you read that again, please?

Q. "In each of the cities, with the same manner of explanation, I find the ratio of business properties is about 93% in all of them, so I have used that factor".

A. Well, that's taking into consideration land and improvement, the over-all ratio of improved property and the vacant property combined, whereas the 15% to 20% testimony relates to vacant land—or, relates to land.

Q. Relates to land alone in the business section?

A. That's right.

Q. And has no relation whatever to the improvements in the business section?

A. That's correct.

Q. Is that correct?

A. Yes, sir.

Q. Do you have any idea of the total amount of the improvements on the assessment roll in the business section in relation to the land value in the business section?

A. No, I don't.

Q. You don't know anything about that?

A. I have never seen any take-off on that.

Q. Well, now, you testified in the areas which you believed to be low—

A. (Interrupting) That's right.

Q. (Cont'g)—that you thought the City could add a million and a half to the over-all assessment. Is that correct?

A. Yes, sir.

Q. That related solely to land values?

A. That's right.

Q. Now, how much of that did you consider could be added to the business section?

A. I don't believe it is possible to make an accurate estimate of the amount that could be added to the business section without a valuation of the area being made, and the front-foot prices of the property.

Q. And you haven't done that?

A. Oh, no.

Q. Have you done that as to the other sections in the Gables that you include in that Million and a Half addition?

A. No; I had estimated the amount of property which exists in the areas which are shown to be low. I made an over-all estimate; no specificates estimate; to take off specific properties, that would be an unlimited job.

Q. That Million and a Half is another estimate and guess, isn't it?

A. It is purely an estimate, yes; sure.

Q. How much might two approximately equally qualified assessors vary in assessing properties as extended and of the approximate value of Coral Gables?

Mr. Gibson:

We object to that as passing on the qualifications of two hypothetical tax assessors; I don't think it is material.

The Master:

Objection overruled.

A. I can't answer the question because I don't know what two other individuals might do, but in as much as human nature is not the same, there would certainly be a difference, but how much, I have no idea.

Q. You would have no idea how much there might be a reasonable variation?

A. No, I don't, because it would depend on the viewpoint of the individuals, and no one knows what that might, be, but there might be a difference of 10%. There could be a difference of 10%.

Q. There could be a difference of as much as 10%?

A. Yes, assuming they were trying to arrive at a fair value.

Q. And that might be the result of an honest effort, and they would be 10% apart?

A. Yes, that could happen.

Q. Now, you testified as to vacant lands in other sections of the City, and you premised that testimony largely upon your Exhibit 37, I believe it was; the list of 105 properties that you had studied.

A. That one of the bases.

Q. One of the bases for it.

A. Yes, sir.

Q. Now, you were asked the question, "Have you, however, taken certain individual pieces of property or blocks of property and compared the tax assessment with what you think is the true appraisal for taxes?" You were asked that question. In response to that you said, "Yes, sir, I have, with sales, and I assume that the sales reflect the true value of the property". Isn't that a rather rash assumption for an assessor to make?

A. Not if he has enough sales within a limited area to establish a norm for that area, it isn't. As a matter of fact, that's the only way he can arrive at a land value unit or a front foot price.

Q. Is the sales price the only element you consider in arriving at a true appraisal value?

A. It isn't the only one. It is probably about the only one available for vacant land because there is nothing much to consider but its location and desirability, and its location and desirability is reflected in the price for which it sells.

Q. Well, do sales prices always reflect the true value of property?

A. If you speak of property in general, why, no, they don't.

Q. They don't. How about vacant property?

A. They probably come closer to reflecting the true value of vacant property than improved property. Of course, a wash-out sale I am excluding that, and a distress sale, because that never represents the true value of property. There is no accounting for what different people will do in transferring property. Now, I might transfer for one sum, and two others might transfer for another, and there is always a human element that will vary, but in the majority of cases that would be overcome to a large extent.

Q. Well, how many instances are necessary to arrive at a fair value?

A. Well, from a standpoint of tax assessing, quite often the assessor is confronted with no instances, but he is also confronted with the fact he must determine a value, and therefore he must do it by relation.

Q. Is one instance sufficient to establish a proper ratio in a section of several hundred lots?

A. One instance? No, sir, I wouldn't think it was.

Q. Now, using sales values to aid in determining the true value of property, is it good practice or safe to use sales prices only in one year?

A. No, sir, they should be used continuously.

Q. For over a period of many years?

A. In assessment of taxes, most assuredly. That is, if the tax roll is to be maintained at an equal level from year to year.

Q. Your Exhibit 37, however, covers only one year's sales.

A. That's the last current year, the last current assessment year.

Q. And the sales took place in that year?

A. That year and the year previous, 1939 and 1940, I think with possibly two exceptions in there, which are noted.

Q. Now, to get this clear on whether your statement that you assume that the sales reflect the true value of the property, you also testified on your first appearance on the witness stand here as a witness for the City, in response to this question: "Will you please define for the Court what you mean by true value", your answer was: "My definition is that it is the sum for which a property should sell, providing both the buyer and seller had equal knowledge of the advantages and disadvantages of past, present and future ownership."

A. That's right.

Q. Is that the real basis upon which a true value should be arrived at?

A. That's the one I like to use in my work.

Q. Now, in using this Exhibit 37 as the basis for your testimony, did you make any study of these various sales to determine the factors indicated in that last mentioned—

A. (Interrupting) No, sir, I didn't, if you mean contacting the buyer of the property or the seller, to determine whether he thought he sold at a bargain or whether he got stuck; I mean, I didn't determine that.

Q. You just took bare figures?

A. No, but I judged there were enough sales there to iron out discrepancies which might exist in individual cases; and after all, a further refinement of 500 wouldn't change the result very much.

Q. It might not change the result?

A. It might not.

Q. And on the other hand, it might change the result?

A. It might, but it would be small if it did.

Q. It would be small?

A. Yes, I believe it would.

Q. So you didn't attempt any appraisal of the properties listed in this Exhibit 37?

A. Well, if you accept the fact that you believe a sale reflects the true value of the property, that is an appraisal. I mean, that's the best evidence you can get.

Q. I'm asking you as an expert whether the sale does reflect the true value of the property.

A. I believe it does when it is taken in a group fashion like that, and an average.

Q. Does that prevail both in boom time and depression time for taxation purposes?

A. In depression times you don't, as a rule, have enough sales to give you an average. It probably would if you threw out distress sales, but if you threw out distress sales in depression times, you don't have any sales left, because they are all distressed.

Q. Well, you don't fail to fix some assessment valuation, do you?

A. No, because the law requires it, so the judgment and experience of the assessing authority then is the best basis for making the assessment.

Q. Well, now, in times of depression you say the property should not be assessed down to the market value. In good times and times of prosperity should the true value for assessment purposes of the property keep pace with the advancing market for property?

A. I didn't say it shouldn't be assessed down to the market value. I said you couldn't determine what the market value was. If you can determine it why most assuredly it should be assessed down to it.

Q. Well, suppose there is no market value?

A. There is not, in many instances. I believe in Coral Gables, back in the early '30s, you couldn't establish a market value because there were no sales.

Q. Mr. Donehoo, is it practical for a tax assessor in fixing values for taxation purposes to keep pace with the declining values on a declining land market?

A. Yes, sir, I believe it is possible. It very rarely is done, but it can be done.

Q. Well, isn't it better practice not to attempt to keep pace with it?

A. It is better practice to wait until you are sure that the decrease is permanent, and that the trend is definitely downward, surely.

Q. Well, now, doesn't that same principle apply when you have an increase in market?

A. Well, yes; surely.

Q. The same thing would apply?

A. Surely.

Q. Well, now, in a situation like we have in Coral Gables, with a large surplus of vacant lands, isn't that principle more important in assessing of those lands than in the ordinary community where there is a normal quantity of vacant land?

A. Well, I don't think it is any more important in one political unit than it is in another. The object is to get a true value base at all times, regardless of the character of the community.

Q. Does the quantity of vacant property and the demand for its use have any bearing upon the true value of property—vacant property, I mean?

A. Well, yes, it has a bearing in that it tends to set the level of values lower than they might be in comparable communities where there is a limited amount of land.

Q. Well, now, isn't this true, too, that in communities where there is a large surplus of vacant property, won't you find one higher value expressed in sales of property for immediate use, and possibly a lower value reflected in the sales of large quantities of the vacant land to be held for speculative and investment purposes?

A. Well, there is no doubt that if all the land in a community were utilized immediately for use it would bring a higher sum than if it were bought for speculation in

anticipation of a later return, because naturally the difference in the carrying cost of the money between now and the time when the speculator might realize on it would be deducted from the value of the land, so there would be very little difference, assuredly.

Q. And the sales price for the immediate use of the vacant land would very likely be higher than the other sales price, wouldn't it?

A. I think there would be a difference, yes.

Q. Would there be any difference, do you think, in the sale of a single lot for immediate use or for holding?

A. Yes, I believe I would be more inclined to pay more for a lot if I wanted to build on it immediately and wanted that particular lot, than I would if I wanted the lot to speculate on as to a return.

Q. Now, on these lots that you based your study on in Exhibit 37, you don't know whether they were bought for immediate use or whether they were bought for speculation and investment, do you?

A. I don't know which is true, but the fact that they are spotted by areas indicates that there is a development in that area and people are buying them to use rather than to speculate on. As a rule, when speculation is involved a big group of lots are bought, and usually they are close together; I mean, within blocks.

Q. Now, in this Exhibit, how did you figure the average of the assessment ratio of the 1940 column at the end of the exhibit?

A. Added all the items, the assessed value of all the items and the sale price of all the items, and divided the assessed value into the sales price to get the ratio.

Q. That's just a straight ratio of all these?

A. The sum of all of them.

Q. And the sum of the assessed value of 1940?

A. Yes; that's correct.

Q. Is that proper practice, to apply the results of a spot check to an assessment roll?

A. Yes, sir.

Q. Should not such an average be a weighted average?

A. This is weighted. It applies only to vacant land; it is weighted in that respect.

Q. Well, is it weighted in respect to the size of the sections which have a high assessment ratio and the size of the sections that have a low assessment ratio?

A. No, I don't know how you could weight it otherwise. If you had more than one kind of property, then you might weight as to types of property.

Q. Well, it is all vacant land?

A. Vacant land, yes.

Q. All right. Now, some of these sections, I believe there are ten of the sections that the average of the sales in the particular section are above 100%.

A. Yes; very naturally.

Q. All right. Suppose in those sections you would have a large quantity of property, a very large quantity of property, say for example a Million Dollars total assessment in those sections. Now, you have in this Exhibit, 11 sections that are under-assessed, and suppose that the tax roll shows that the total assessment in those 11 under-assesed sections is only $500,000. Then what about weighting that to see what the true average of of over or under-assessment should be?

A. Well, the only thing that you could do there would be to confine the sales within a district to that district, and see what the ratio was in that district, and then take another and another, but the net result would be the same, because when you put them all together you would get whatever is shown there, 74% or something like that. It would be simply breaking them down into districts, but you would get the same totals because you have the same total sums involved.

Q. But I mean, if you apply these percentages to the total amount of land involved in the particular section.

A. You would get one ratio.

Q. Would you get the same ratio of what the assessment should be adjusted, as you get by making the average in the manner you have here?

A. No, you wouldn't get the same ratio there; you would get a different ratio in different districts, but the sum of the whole would be that ratio.

Q. Would that affect the over-all assessment on vacant land?

A. What would affect it, Mr. Adams?

Q. The weighted average, or your method of averaging, how would the two methods affect the over-all assessment of vacant land?

A. It is impossible to answer that without a field analysis of the property and the application of units of value as indicated by these sales within the districts, and a computation of the land within those districts, and as far as the influence of these sales extends.

Q. And that's the only way that could be done?

A. Yes, sir.

Q. And you don't know how that would work out?

A. No, sir, I don't.

Q. Now, I believe you said you had just taken these lots listed in Exhibit 37 because they were the ones which had been sold and you found deeds on the registration records as to them?

A. Yes, sir; that's right.

Q. Now, suppose for example, instead of there being 36 parcels over-assessed and 69 under-assessed, you would have found sales involving 69 parcels that were over-assessed and 36 parcels that were under-assessed. Would that have made a difference in the percentage?

A. It might not make any difference; it would depend on the value of each item. You might have one item valued at $500.00, and another at $15,000.00, which of course is many times $500.00, so you can't draw a parallel there.

Q. Well, the net result of this Exhibit 37 is a spot check from a chance lot of lots, isn't it?

A. No; it is the actual sale of lots.

Q. I mean an actual sale of certain lots.

A. Yes, sir.

Q. But they are just picked by chance.

A. No; they are actually where the transfers occurred. They weren't picked; they appear on the county records.

Q. They appear as sales?

A. Yes, sir.

Q. Do you represent these to be all of the sales during the period that you took sales off?

A. No.

Q. Well, now, is it your opinion that the sale of one lot, Lot 5, of Block 49, Granada, in the Granada section, and in Section K the sale of 8 lots, that you get the correct percentages of assessment by considering the one lot in Granada and likewise the correct percentages of assessment by considering the 8 lots in "K"?

A. Oh, no. It is not my representation that that is true. This would indicate that an analysis is needed and a revision of the values. Now, to what extent that might happen in the individual blocks can only be determined by an analysis.

Q. Then this exhibit is just an indication of the trend of the assessments in these particular places?

A. Yes; it indicates that the vacant land as a whole is low.

Q. But it is not your opinion that it is low in the amount of approximately 27%?

A. Well, when an actual study is made it might be 25, or it might be 30, or it might be 15.

Q. And it might be 10?

A. Yes, sir, it could be, but the indications are that it wouldn't be.

Q. Now, you testified that in Country Club No. 3 and 4, and 6, and in the portion of the Riviera section on the

canals, that you thought the assessment of the vacant lands was low. Is that correct?

A. That's one of the districts that I outlined for you on the map?

Q. On the map, yes.

A. Yes, sir.

Q. Now, do you know the condition of the streets, the parkways, the foliage and the landscaping in those areas?

A. Yes, sir, I do.

Q. What is it?

A. There is very little landscaping of any sort, and the streets are in process of being reconstructed. Work is being done on them, and there are very few trees.

Q. Then these areas are those undeveloped areas or which are not completely developed?

A. Up until a few years ago when there apparently became a very definite market for them, and that must have been predicated upon some desirable feature in connection with the property.

Q. But they are, compared to the built-up sections of the Gables, otherwise more or less in an undeveloped and raw condition?

A. Yes. I don't know to what extent, but in the past few months the City has, or somebody has done work on the streets, and the deepening of the canal and widening of it.

Q. But the work is not yet completed?

A. I don't know whether it is completed or not.

Q. You don't know?

A. No.

Q. Now, this Exhibit 37 would indicate that many sections in the Gables are assessed above 100%, or above true value. Do you have any idea how much in the overall assessment a reduction of those over-assessments would amount to?

A. You are speaking about the improved property?

Q. The vacant land. You are talking about the vacant land.

A. No, for the simple reason that in determining any ratio on a class of property, or on property in general, if you arrive at a ratio it is composed of so many items at that ratio, and so many items below it and so many items above it, and the average is the result; therefore it is reasonable to assume there are just as many over as there are under, and as a matter of fact, they are, from the standpoint of total value but it may not be true as to the number of parcels.

Q. Well, then, if you don't weight these percentages according to the total amount of vacant land in a particular section, how can you come out at a true average?

A. Well, you are taking—in this exhibit, vacant land is taken by and large for the entire city.

Q. By and large for the whole city?

A. Yes; and the showing is that in those districts it is definitely low, because that's where the preponderance of sales have occurred.

Q. What about the districts where there were no sales?

A. Well, what about them?

Q. You express no opinion about them?

A. No, sir.

Q. You don't know whether they are high or low?

A. No, sir; not without a further analysis.

Q. Your exhibit here shows that in Section "D" and in Section "B" and in Section "E", there were about as many sales as are shown in other sections, and those names are all above 100%.

A. Yes, sir.

Q. Doesn't that indicate that there is very likely, from this spot check that you have made, an over-assessment of considerable quantity in the Gables in those sections?

A. Well, Mr. Adams, I testified that I found the overall level of valuation is 93%. That 93% consists—if we

take all the items in the City and summarize them, half of them would be above 93 and half below, and if that is correct, and if there are any that go above a hundred, naturally are over-assessed, and those below 93 or a hundred, whichever you take as a basis, are under-assessed; therefore you have as many either way, using any base, 93, or 100, or 50.

Q. So your ultimate opinion is that the total over-all assessment is on the basis of 93%?

A. Approximately.

Q. Approximately 93%?

A. Yes.

Q. That might be 94 or 95%, or even less?

A. It could change some fractions by a greater refinement.

Q. Now, how much of a study of the 1940 assessment roll have you made, Mr. Donehoo?

A. I analyzed something over 100 parcels of property.

Q. About a hundred?

A. Something over a hundred; I don't recall the exact number.

Q. Well, now, what do you mean by analyzed them?

A. Viewed the properties by first locating them from sales and then viewing them to determine whether or not the sales price reflected a fair value.

Q. That's this same one?

A. No, sir; that's not the same one.

Q. That's another hundred properties?

A. Yes, sir; it may include some of those, however.

Q. But that hundred is improved and vacant lands?

A. That's right, yes, sir.

Q. Now, is that study what you base your 93% upon?

A. No, sir. That and this, and my general knowledge of the situation in Coral Gables led up to the conclusion that 93% is the factor.

Q. Now, have you ever made any study in Coral Gables that was not a spot check similar to this Defendants' Exhibit 37 study?

A. I made a study for the City in 1934 or '35, I believe it was.

Q. It was the spring of 1935, wasn't it?

A. I believe it was. It either ran over from '34 to '35, or it was in the spring of 1935.

Q. That study was after you made your spot check with Dr. Reed?

A. That's right.

Q. That was incorporated in his report?

A. That's correct.

Q. Then you came back to the City and made a more complete and thorough study?

A. That's right.

Q. Of the whole assessment roll, didn't you?

A. Yes, of all the property in the city; all of the real estate.

Q. Both the vacant land values and the improvement values?

A. No, sir, I did not assess the improved values or make any recommendations as to rates on buildings. I assisted in drawing the schedules, but I had nothing to do with the actual field work.

Q. And that work on the 1935 tax roll was confined to the vacant land values?

A. No; land values of the improved property, and vacant land values.

Q. Land values of the whole town?

A. Yes, sir.

Q. Was that a spot check study or a complete study?

A. It was a complete analysis.

Q. It was a complete analysis of the whole city?

A. That's correct.

Q. And was that a complete study of every element that should go in, to determining the true value of property?

A. As far as we could ascertain at that time, yes, sir.

Q. Now, you testified about your appraisal studies of other towns in Florida; quite a number of them. Haven't all of those appraisal studies that you have made in Florida resulted in a reduction and equalization of the assessment values?

A. I don't believe that's true, no. I don't believe it's true in Tampa, and I don't believe it's true in West Palm Beach. I would have to consult the record in each City to find out. I know it is not true in Miami. The values have been increasing here, as shown by the increased tax roll each year, and I don't believe it's true in Tampa. It was true in St. Petersburg because that was made in 1931-32, and the values were away up there from the boom time period.

Q. Well, have any of the recommended increases that you have made been sharp, large increases?

A. You mean, speaking about particular property, or—?

Q. The over-all assessment, or whatever recommendation you said. You said in Miami there had been an increase in assessment. Was that a large jump in the over-all assessed valuation of particular places?

A. Oh, I don't think it was a large jump; in excess of the normal increase due to new construction from year to year. Some increase in land values from time to time. I don't think in Miami it resulted in any overthrowing or huge change in the level of values that existed at that time.

Q. Well, now, in some of your earlier studies in the 1930s were not there made, as the result of your studies, and recommendations, huge changes in the assessment values of lands?

A. Oh, yes; very definitely.

Q. On Page 873 of the Transcript you have used the expression "fair and equitable roll", and "I will ask you if in any of the instances when you determined a fair and equitable roll the tax assessment was raised as to the total"—that's the question that was asked, and you answered, "Are you speaking of Florida, now?" Question: "Yes"; and your answer: "Or of other places? I can't recall an instance in Florida where the assessment has been increased", and then you were interrupted; "Can you recall any such instance in any other place than Florida?"—Now, did you mean then that you couldn't recall any instance in Florida where there had been a marked increase in the basis of the assessment value as the result of your studies and recommendations?

A. Well, there is possibly a confusion with respect to my connection with the assessment process in those cities. In some places I merely acted as consultant, and in some places I made the valuation, and my recommendation was adopted. So I was probably speaking about in the one place where I made the assessment, and in the Miami instance I was merely consultant and the assessor made the valuation.

Q. So where you have made the valuations yourself you have made none that resulted in a marked increase?

A. I'm not positive about West Palm Beach. I believe there was an increase there.

Q. Do you mean an increase in the over-all total assessment value of West Palm Beach?

A. Yes, sir, I'm talking about land, buildings, personal property and everything else.

Q. Wasn't that due largely to the increased value in the building, rather than the land value?

A. I couldn't say.

Q. You couldn't say?

A. I don't know what it was.

Q. Do you know what percentage of increase that was?

A. No, sir, I do not; I'm not sure that it was an increase. I would have to consult the records to determine whether it was or not.

Q. How complete a study of West Palm Beach did you make?

A. We analyzed each individual parcel of property and made an inventory of all the physical and pertinent facts about each parcel, and then made an appraisal based on schedules of cost and depreciation.

Q. When was that made?

A. 1936.

Q. Well, now, since then what work have you done regarding the assessment rolls in West Palm Beach?

A. Merely kept up with the roll from year to year to determine what has happened in new construction and increases in the tax roll and what are considerable changes.

Q. Have you found any?

A. No drastic changes.

Q. No drastic changes?

A. No, sir.

Q. Have you made any spot checks on West Palm Beach properties similar to this spot check in Defendants' Exhibit 37?

A. No, sir.

Q. What study have you made of the assessment roll in Sanford?

A. I have made quite an exhaustive study.

Q. Did you make the assessment in Sanford?

A. No. (Examining records); I am trying to give you the date. I didn't make the assessment; I analyzed the situation there and made a spot check.

Q. I would like to have the date.

A. I'll give you the date.—November 9, 1940; that's the date the report was submitted.

Q. How long a period did your study take, leading up to that?

A. Approximately a week.

Q. Do you recall how long you were working on the Coral Gables tax roll in 1935?

A. I would say from three to four months. There may have been intervals during that period that I was away, but it covered approximately three or four months.

Q. Now, you testified what in your opinion was the relative tax-paying ability of the residents of Sanford and West Palm Beach and Coral Gables.

A. Yes, sir.

Q. What if any effect does that have upon your opinion of the value of the property or the basis of the over-all assessment value?

A. None, except that as one of the many factors that an appraiser carried around in his head, it is there; I mean, you know that the character of the population is such, and that naturally their tax-paying ability is relative to the highest type of population that can pay taxes.

Q. Do you think that is reflected in the tax assessment values as they exist in Coral Gables today on the tax rolls?

A. Explain what you mean by "that".

Q. "That" is the tax-paying ability you have been discussing, and its relation to the assessment values. Is that reflected in the assessment values there now?

A. I think that it has certainly been considered, but I do think that the values in Coral Gables—I'm speaking now about the entire United States—are lower than any community offering the facilities that Coral Gables does offer as a place to live, a residential community.

Q. But you think the over-all basis of valuation is 93% of the true value?

A. Yes, sir.

The Master:

Read that next to the last answer.

(Answer in question read by the Reporter.)

Mr. Adams:

We move to strike the last portion of that answer as not being responsive to the question, nor in explanation of the answer made.

The Master:

The motion is denied.

Q. Now, Mr. Donehoo, on Page 887 of the record, after you had been testifying about your opinion of the ability of the residents of Sanford and West Palm Beach and Coral Gables to pay taxes, you were asked: "Now, from those factors can you state whether or not the City of Coral Gables can stand an extra burden of taxation without stultifying its taxes, and from your experience in that regard?" and you answered, "I think it sure can to the extent that an increase might be brought about by increasing the land values that are low, whatever that sum may be". Now, did you mean by that that you thought the over-all tax burden of Coral Gables could be increased without stultifying its collections by the result of an over-all increase in its assessment roll of somewhere in the neighborhood of a Million and a Half Dollars? Is that what you meant?

A. Not exactly. I meant that the revenue certainly could be raised from that territory which is low by an increase in the assessed value. Now, there are two ways in which that revenue may be utilized. It may be allowed to go in as an increase in the budget, or the budget may remain as it is, or the money may be appropriated back to the remaining taxpayers by a stationary tax rate; by failing to increase the tax rate. It would actually

mean a lessening of the tax rate, because you would have an increase in the assessed value if the budget remained stationary.

Q. If the budget remained stationary?

A. Yes, sir.

Q. But the result of the increase you are talking about here, as I understand your answer, is the increase resulting from raising the land values?

A. That's right.

Q. The amount that you say you believe they are low?

A. That's right.

Q. That's what you meant there?

A. Yes; that's right.

Q. And then you were asked another question: "In other words—well, it could at least come up to the level of the other two towns, could it not, in dollar tax burden?", and you said, "I would think so, yes". Do you know how many municipalities there are in the Miami area?

A. Roughly, I would say about twelve or fifteen.

Q. Are you familiar with Miami Springs and Miami Shores?

A. I know where they are, yes, sir.

Q. And South Miami?

A. I know where it is.

Q. Surfside, and all these communities around here?

A. I have been through them. I haven't paid any particular attention to them.

Q. Do you know it to be a fact, as has been testified to in this record, that these communities are competing communities with Coral Gables for new residents who might move into this area?

A. I didn't know that that had been in the testimony, no, sir.

Q. Have you observed that to be true, or not?

A. I haven't made any observation on that point.

Q. You haven't made any observation?

A. No, sir.

Q. You have worked in Miami on the assessment rolls, and Coral Gables, both?

A. Yes, sir; that's right.

Q. Doesn't Miami have some residential areas that are comparable to Coral Gables?

A. Yes; it has residential areas that are comparable. By and large, the character of the two cities are different.

Q. Yes; but there are residential areas that are comparable.

A. Yes, sir.

Q. Mr. Donehoo, I hand you a photostatic copy of the City's Exhibit No. 37, which is a graph showing in one line the 22-mill tax rate ceiling of the City of Coral Gables, the line being marked "1" with a circle around it, and showing as to other towns in the Miami area, opposite other numbers, "3" for Miami millage, "4" for South Miami, "5", the Miami Shores millage, and Miami Springs Millage, and "6" the Miami Beach millage; and "7", the Surfside millage, each of them having been adjusted to full value basis of the assessment.

A. Yes, sir.

Q. The solid line, No. 1, being the total millage in the City of Coral Gables, and the solid line No. 2 being the millate for the minimum debt service millage under the plan of composition being considered here. Do you understand that exhibit and what it is?

A. No, sir, I don't.

Q. It shows the millage in these several towns in the Miami area adjusted to full valuation of properties on the assessment roll.

A. May I ask a question?

Q. Yes.

A. Adjusted how, Mr. Adams? By appraisal, or how?

Q. By Coral Gables taken as 100%, and the exact millage given as to Coral Gables. The millage in the other towns where the assessment was found to be 110% and the millages adjusted so that it would be lower to put it on

a comparable basis with the Coral Gables millage. Where the assessment roll was on a 50% valuation, as in South Miami, I believe, then the millage levied in South Miami was cut in half to illustrate the basis, by making it up.

A. What is the authority for the determination of the ratio?

Q. Well, you are not concerned with that. That's the process. The record shows that that was the basis, there there is that relation on the millage levied in those several towns upon the full value basis of lands. Now, with that situation in those towns in this neighborhood, did you have any such situation as that in mind when you testified that you found Coral Gables could pay on the same tax rate that Sanford and West Palm Beach are now paying on?

A. Any such situation as this?

Q. Yes.

A. No, sir, I had never seen this before.

Q. Did you know that there was that relative relation between the taxes in the City of Miami and the City of Coral Gables?

A. No, sir, I didn't.

Q. Do you think that that relation between the taxes in the City of Miami and the City of Coral Gables injects another element into the total amount of tax burden that the City of Coral Gables can carry, and continue to grow?

A. No, sir.

Q. What?

A. No, I didn't know it.

Q. Do you think it would make any difference? Did you understand the question when you first answered it?

A. No.

(Question read by the reporter.)

Q. Do you understand the question clearly now?

A. No, sir, I don't.

The Master:

Read the question again. (Question re-read.)

A. As far as I know, it doesn't inject any other element.

Q. It doesn't inject any other element into it at all?

A. As far as I'm concerned, no, sir.

Q. Mr. Donehoo, was your answer to that question in considering the amount of the assessments that should be made in the Gables?

A. I believe you had reference to my statement that there was a 15 or 20% difference in the taxpaying ability of the residents of Coral Gables over the residents of West Palm Beach. Isn't that where the question started?

Q. That's where it started. You started it. Now let's see if we can get to understand each other.

A. I still don't believe I understand what you are driving at.

Q. You stated that there was a 10 or 15% better taxpaying ability in the city—among the residents of the City of Coral Gables.

A. That's right.

Q. Over the residents of the City of West Palm Beach. Didn't you?

A. Yes, sir.

Q. Now, then, you also testified that you thought the Coral Gables taxes could be increased without stultifying its roll by changing its rate to the same tax rate as exists in West Palm Beach.

A. No, I don't believe I testified to that.

Q. Well, you said that West Palm Beach and Coral Gables both had a tax assessment basis of 93%, didn't you?

A. Yes, sir; over-all, that was.

Q. That's over-all?

A. Yes.

Q. You testified as to what the millage in West Palm Beach was, and what the millage in Coral Gables was, didn't you?

A. Yes, sir.

Q. Thirty-four mills in West Palm Beach, and twenty-two mills in Coral Gables?

A. Yes, sir.

Q. Then you testified here, "Well, it could at least come up to the level of the other two towns, could it not, in dollar tax burden"—

A. Yes; in dollar tax burden.

Q. And your answer: "I would think so".

A. Yes, sir, that's right.

Q. Does that mean that you think Coral Gables could stand an increase from 22 mills to 34 mills on this total assessment roll which is now on a 93% true value basis, according to your belief?

A. Well, by comparison with West Palm Beach, yes, I believe it could.

Q. By comparison with West Palm Beach?

A. Yes; and that's what we are speaking about.

Q. What percentage of increase in taxes would that be in Coral Gables?

A. It would be about 50%, wouldn't it?

Q. It would be 54%-plus, wouldn't it?

A. Well, somewhere around there, roughly.

Q. Well, do you mean to express an opinion that Coral Gables could jump in one year its tax burden 54%?

A. Oh, no.

Q. Without stultifying its collection of taxes?

A. Oh, no, it couldn't do that.

Q. It couldn't do that. Well, what about a jump to put it on a par with Sanford? Sanford's millage was 30, wasn't it?

A. Yes; 30; correct.

Q. What would the percentage increase be if Coral Gables jumped its millage from 22 to 30?

A. Well, that would be about 25%, somewhere around that.

Q. I figured it 35.

A. I didn't run it out in figures; it would be 24 into 6—I beg your pardon—22 into 8.

Q. The jump would be more than one-third of the Coral Gables millage?

A. Yes.

Q. Well, do you mean to testify that Coral Gables could, without stultifying its tax collections, make that percentage of jump in its millage?

A. Certainly not in any one year.

Q. Not in any one year?

A. No.

Q. Mr. Donehoo, does the competition of neighboring towns have any relation at all upon what might be the maximum tax rate that you could advisably place upon the property in any one of those competing towns?

A. In some instances it does.

Q. And if the two communities are competing communities for new residents, a substantially higher rate of tax in one of them will affect adversely the growth of that town over a period of time, wouldn't it?

A. It should, if they compete for exactly the same type of population.

Q. And a wide difference in tax rate of between 50 and 100% would have a very marked effect upon the future of the town having the higher rate, wouldn't it?

A. It would unless the income, or the national income increased in proportion to the increase here.

Q. Unless the national income increased to the point that we were in in the good old boom times, when we weren't worrying about dollars?

A. Something like that, yes.

Mr. Adams:

That's all, if Your Honor please.

(Recess taken from 11:45, to 1:45 P. M., at which time the examination of the witness was resumed.)

Re-Direct Examination.

By Mr. Gibson:

Q. Mr. Donehoo, Mr. Adams questioned you rather closely this morning as to whether or not the purchase of property indicated in one of your charts was for speculation or for immediate improvement, or the purchasers were buying for immediate building. Which of the two types of purchasers are more indicative of a sound investment situation, or a good promise of increased value?

A. I believe the speculative type of purchase would be more indicative of the future return on the investment than one building for use, because the man building for use usually builds for a home and he is not particularly concerned with an increase in value, although he likes to be assured that there is stability.

Q. In other words, a speculative purchase, or what you might say, a phase of speculative purchases rather indicates one of two things, present market value less an intrinsic worth, or a future increasement which is imminent; is that correct?

A. Yes.

Q. Now, getting to Mr. Adams' examination as to competitive comparisons. Could you compare reasonably the surrounding communities or cities in Dade County with Coral Gables?

A. With respect to a place to live? As desirability as a place in which to live?

Q. Yes; or for the type of place it is.

A. Well, I believe that Coral Gables offers an appeal to a particular type of individual as a place to make a home, and it is not the same type of appeal that might obtain in the surrounding residential communities. I mean,

it is a higher type and a higher grade, and people who desire to live in Coral Gables and who buy there would not be particularly attracted to some of the other communities in the Miami district because Coral Gables offers the things that these other districts don't offer.

Q. In your opinion, based on your experience in these matters, would one who had selected Coral Gables as a place to build a residence of the type that are built out there be discouraged from that to a point where he would build somewhere else by the amount of the taxes levied?

A. I don't believe so. A person who builds the type of residence that is required by the restrictions in Coral Gables is not likely to be scared away by a few dollars in the tax bill, Forty or Fifty Dollars, even; I don't think they would make any difference, because he is of the type that that amount of money wouldn't be considered of importance in the payment of taxes.

Q. Are there any other factors that might be involved in that situation other than the annual outlay of taxes?

A. Well, the economic situation in which the home builder finds himself would have a great deal to do with it. I mean, he couldn't go there unless he was in an upper bracket—an upper income bracket.

Q. Do you not also have a factor of liquidation value to consider?

A. Do you mean by that that he would be more likely to maintain the original cost of his investment in Coral Gables than he would in the surrounding communities?

Q. Yes.

A. I think that definitely that is true. One building there would be more likely after a number of years to get his investment back, less the depreciation, than he might if he built the same type of building in Surfside or Miami Shores.

Q. Well, now, assuming that a lot of these vacant lands would be improved by owners of small homes, would the increased millage in Coral Gables be a material deterent?

A. The proportion of small homes is small in Coral Gables, and in so far as the prospective owner is down in the economic level, it would have an effect, but very often those who live in the smaller homes may be in better financial position than those who live in the larger ones; it's hard to say, but by and large, I don't think it would have any effect because of the small number.

Q. As a matter of fact, the homestead exemption would take care of most of the small home owners?

A. Yes. As a matter of fact, considering the homestead exemption, it shouldn't ever have any effect because the tax on homesteads is always going to be so far below that which obtains in other states.

Q. Now, what would be your idea on this, along those lines, with regard to a commercial enterprise? Now, I am speaking of a commercial enterprise such as you have in Coral Gables that is dependent for support upon the people of Coral Gables.

A. Well, it shouldn't be a deterent there because there are no industries there in Coral Gables. There are only the type of business establishments which cater to the demands and needs of the people who live in the community, and those enterprises are going to develop regardless of the tax burden, because the price obtained for the merchandise will naturally be affected by the amount of taxes, so if something costs two cents more than it does in Miami, people will be able to pay it. They will still exist because where there is a demand for business, it will persist.

Q. As a matter of fact, if there was no taxes, and no business originating in Coral Gables, you would still have no business houses there, would you?

A. That's right.

Q. Now, let's get into the taxpaying ability situation Mr. Adams examined you on. I believe you said that if Coral Gables taxes were increased 50% that it would have the effect of stultifying the tax collections.

A. Yes, I think it would have that effect if done in one year.

Q. Yes, if they were increased in one year. And that 50% is approximately the increase that West Palm Beach has over Coral Gables, is it not, and that's the situation that was being referred to?

A. Yes.

Q. Now, explain how you arrive at that conclusion.

A. Well, the impact of that increase of taxes in any one year would be so great as to cause a general uprising or objection to it. It would be almost universal so far as the taxpayers were concerned. It wouldn't be feasible or it wouldn't be sound business administration to put a tax increase of that kind on in any one given year.

Q. Now, as I understand it, the record shows the assessed millage of about 22 mills in Coral Gables?

A. That's right.

Q. If we would assume that the assessed millage was 10 mills, and you would attempt to raise that millage to 22 mills in one year, would you have the same situation?

A. Exactly.

Q. Now, how do you reconcile those statements with the statements that the people in Coral Gables could pay the same taxes that West Palm Beach is paying?

A. Well, because the people in Coral Gables are in a—the residents of Coral Gables are in a much higher economic level than the people in West Palm Beach. Their income is greater. Their standard of living is greater.

Q. And you base that, therefore, that if the West Palm Beach people have the ability to pay 34 mills—and this is disconnected from wanting to pay—that the City of Coral Gables has the ability to pay 34 mills. Is that correct?

A. I would say, if confined to the residents of the city, yes.

Q. Now, Mr. Donehoo, if the same level of taxes have been maintained in Coral Gables since 1937 as has been

maintained in West Palm Beach since 1937, and we had that three or four years' level before us now, do you think there would be any trouble collecting the same taxes next year in Coral Gables as there will be collected in West Palm Beach?

A. I don't think so.

Mr. Adams:

We object to that hypothetical question. There is nothing in the record to justify it, and the witness is not qualified as an expert along that line.

The Master:

The objection is overruled.

Q. Your answer, Mr. Donehoo?

A. No. There undoubtedly would be no objection on that basis, because people as a rule don't make any mass objection to the payment of a tax that's substantially the same as it was the year previous.

Q. Now, Mr. Donehoo, do you think that if at this time the tax levy was raised, we will say as much as two and a half mills, making it 24½ mils, that that increased tax burden would be such as would stultify the collection of taxes in Coral Gables?

A. I don't know whether it would stultify them or not, but I don't know that there would be any basis for stultification.

Q. You don't have the same shocking comparisons there that you would if you would take it straight to 34?

A. No.

Q. Would you be willing to testify definitely that in your opinion it would not stultify it if there was a one and a half mill increase?

A. I don't think it would.

Q. You don't think it would?

A. No.

Q. Mr. Donehoo, in the various situations where you are called upon to act in your professional capacity, where you have the problem of establishing a fair tax roll as a basis for a refunding operation, has the tax burden of neighboring and competitive communities ever been a factor in your considerations?

A. No, sir.

Q. Have you in all of your experience ever heard of that factor being considered except as has been raised by the City in this case?

A. I can't recall any instances from memory.

Q. Is it a factor that is usually considered by experts in such matters?

A. It may be consirered. I don't think it is important.

Q. But you have never heard of it being considered?

A. No, I don't know of any concrete situation.

Mr. Gibson:

That's all.

Re-Direct Examination (Continued).

By Mr. Lea:

Q. Mr. Donehoo, in making your spot appraisals in the City of Coral Gables, did you follow the usual and accepted practices of yourself in such similar cases over the other parts of this state?

A. Yes, sir.

Q. You used the same general method in Coral Gables that you have used in all of your appraisals in other places?

A. That's correct; for that particular purpose, unless an exact detailed appraisal is made, and then, of course, an examination of each parcel is in order.

Q. And that's the same general practice that's used all over the United States?

A. It is common practice.

Q. And have you used a similar practice, although in more detail, in other cities in the United States?

A. Yes, sir.

Q. And I believe you stated that in arriving at any assessment, that such arrival is based on your judgment after studies are made by you of the City?

A. That's correct.

Q. And all of these other units that you have made examinations of have accepted your judgment?

A. Yes, sir.

Q. Of the assessments?

A. Yes, sir.

Q. Now, did you read the testimony that you had previously given, this morning?

A. Yes, I did.

Q. That testimony is correct, is it not?

A. Yes, sir.

Mr. Lea:
That's all.

The Master:
Mr. Berry, have you any questions?

Mr. Berry:
No questions.

Mr. Walton:
No questions, Your Honor.

The Master:
Mr. Adams, have you any further questions?

Mr. Adams:
Yes, sir.

Re-Cross Examination.

By Mr. Adams:

Q. Mr. Donehoo, haven't your engagements, all of your employment in Florida by municipalities, been for the purpose of studying assessed valuations of properties to advise and aid the tax assessor in arriving at true valuations of properties?

A. My employment by municipalities?

Q. Yes.

A. Yes, sir.

Q. And that has been the major and principal portion of your work and studies?

A. Well, I am engaged in other lines of work; I mean, I had other clients besides those.

Mr. Adams:

That's all.

Re-Re-Direct Examination.

By Mr. Gibson:

Q. You have said that you do not think that the comparative tax burden of competitive communities is important. Tell us why you don't think that's important.

A. Because I don't think there is any real competition with Coral Gables. I mean, the type of people that want to live there are going to live there anyway; and that's the thing in a nut shell. I mean, the difference in taxes is not going to affect their desire to live there, or the fact they are going to buy and build and live there.

Q. Do you have an additional fact that surrounding communities are different in a great many respects than is Coral Gables?

A. Yes. That makes up the desire to live in Coral Gables, if he inspects the inducements offered by other communities, and then he comes to Coral Gables and finds the place he is looking for.

Q. Just as an example now of such a comparison, if you are familiar enough to do so and in a situation to do so, give us a comparison of Coconut Grove to Coral Gables.

A. Well, Coconut Grove has no room for expansion; it is limited in its area; and it has undesirable features in connection with its area where the high-grade homes are located, such as the airport and wharves and water, and so forth, and it also has some not so desirable residential areas, and it just doesn't compare with Coral Gables in its uniformity of development and attractiveness.

Q. One of the cities compared with Hialeah is Miami Shores. Are you familiar with Miami Shores?

A. Not specifically. In a general way I am familiar with Miami Shores.

Q. You do know that Miami Shores is on the water-front, do you not?

A. Yes.

Q. Do you think the fact that the taxes were a little lower in Coral Gables—

A. (Interrupting) I know it is north of and between Hollywood and Miami Beach; I don't know the exact limits of the town limits; I know where it is located.

Q. And instead of the ocean front, we will put it on the water-front or bay front.

A. All right.

Q. Do you think that one who had decided to build on the bayfront would build in Coral Gables because the taxes were a little lower?

A. Will you ask the question again, please?

Q. Do you think one who had decided to build a residence on the bayfront would build it in Coral Gables because the taxes are a little lower in Coral Gables?

A. No, I don't believe so; he would build it on the bayfront probably, because he wanted to be on the bayfront.

Q. And the same applies to the communities that are on the ocean, does it not?

A. Yes, I think so.

Q. Now, are you familiar with the town of Hialeah?

A. Yes.

Q. Do you think that one who would want to live in Coral Gables would live in Hialeah because the taxes in Hialeah were lower?

A. No.

Q. Why not?

A. Well, it is not nearly so desirable a place to live.

Mr. Gibson:

That's all.

(Witness excused.)

Mr. Berry:

If the Court please, Mr. Bradford, at my request, based on Defendants' Exhibit No. 8, has taken the names of creditors who were settled with, and as shown in the same exhibit, in the same order, omitting from this exhibit that I am proposing to offer, purchases of securities from trust funds. These are only from the general funds of the City of Coral Gables. And this exhibit proposes to show the name of the creditor, the total claim acquired, actual asked market price of the refunding bonds on the date of the acquisition, the same of the TPCs, the amount which was paid for this claim, the amount in bonds at the actual market price which under the plan submitted would have been delivered, the percentage of par of the original claim; it shows the actual cash paid and the percentage of par of that and the percentage of the asked price of the bonds, and it shows the excess of cash paid over the asked price by reason of the payment in cash if you take the refunding bonds at the then current price; and it shows the number of refunding bonds which could have been purchased at the current market. And I should like to ask the witness Bradford regarding this exhibit, with the view

of filing it, and I will state that this is taken from Defendants' Exhibit 8, a schedule filed by the defendants although produced by the City. The market value on the asked side of the securities is taken partly from the testimony of Mr. Shaw within the limits that he testified to in his testimony, and also from the records of Ed. C. Wright & Co. If there is any objection to either, we will attempt to put on further proof regarding it. The purpose of this exhibit is to put in easily understandable form and codify a great amount of testimony, and putting in a convenient form a great many pages of testimony that we thought would be more accessible to the Court in that way.

1351 WALLACE D. BRADFORD was recalled as a witness on behalf of the objecting creditors, and being still under oath, further testified as follows:

Direct Examination.

By Mr. Berry:

Q. Mr. Bradford, you have been sworn and testified in this case heretofore?

A. Yes, sir.

Q. At the request of counsel have you prepared a list of the settlements made as reflected on Defendants' Exhibit 8 filed in this cause?

A. Yes, sir.

Q. I will ask you to take the exhibit which you have prepared, and for instance, explain the account of Helen O'Connell, which is the first one which appears thereon.

A. According to Defendants' Exhibit 8, on October 18, 1937, there was purchased from Helen O'Connell $39,375.00 face amount of interest and principal claims. Defendants' Exhibit 8 likewise shows the amount of that claim which was refunded by refunding bonds and tax participation certificates which were issued to the City in exchange

therefor. On October 18, 1937, according to the information which was available to me in the form of records supplied by Ed. C. Wright & Co., the asked price of refunding bonds was 50, and of tax participation certificates, 9. Applying those prices against the respective amounts of bonds and tax participation certificates, I arrived at a total market value on the asked side of the refunding bonds and tax participation certificates which were issued for the claim of $39,375.00 to be $9,693.75, which was 24.61% of par or the face amount of the claims acquired. Defendants' Exhibit 8 also shows that the City paid for the Helen O'Connell claim $21,750.00, which is 55.23% of par. $21,750.00 also is 224.37% of the asked price of bonds on that particular day. In other words, it is 224.37% of the amount which the City would have had to pay for the same amount of refunding bonds and tax participation certificates. Continuing further, the amount which the City paid, according to Defendants' Exhibit 8, for the O'Connell claim was $12,056.25 in excess of the asked price for the same amount of securities. Now, that $12,056.25, based on the asked price of refunding bonds on that date, would have bought $24,000.00 more refunding bonds than the City actually acquired for itself.

Q. Now, the City actually had issued to itself refunding bonds and TPCs in the amount that is set out in the 1937 plan of compromise or adjustment which they have filed here, did they not?

A. That is correct.

Q. And the amount of $9,693.75 is the actual cash value of the bonds and the TPCs at which they could have been bought on that date. In other words, the asked price on that date.

A. That's correct.

Q. Now, going again to your asked price there, the market value, you state that the refunding bonds had an asked price of 50?

A. Yes, sir.

Q. I will ask you first to define what do you mean by "asked price".

A. By asked price I mean the price that was asked by persons who owned bonds, for those bonds. In other words, the owner of bonds stated that he was willing to sell bonds on that date at 50; he asked that price of 50 for them.

Q. And the brokerage records that you have examined showed that bonds could have been bought and traded at 50 on that date?

A. That's correct. As a matter of fact, I would like to add further with respect to the asked prices shown in this exhibit that on many of these particular dates the asked price shown in the records available to me were less than the amounts shown in this exhibit, but never greater. Where, for example, the asked price on a given date might have been 45, but a week before, and possibly, let us say, a week or ten days later, the asked price was 47, I preferred to consider that 45 might have been a distress situation and might not reflect the true market, and that the general average might have been nearer correct, and in such an instance I used the 47.

Q. Now, Mr. Bradford, the first quotation here is [illegible]. The quotations seem to drop down to 46, and with some fluctuations increase again up to 60-¼, which are the last quotations on October 12, and December 15, respectively, of 1938. I will ask you in determining each one of those values if you followed the same system you have just described here in reference to the 47?

A. Yes, sir.

Q. Now, in regard to the value of the TPCs, how did you determine that?

A. On exactly the same basis.

Q. Now, Mr. Bradford, without going into the detail on each and every one of these, I will ask you if each name which appears on this sheet of paper is taken from Exhibit 8 filed by the Defendants in this cause?

A. Yes, sir.

Q. Is the amount of the claim acquired in each instance taken from Exhibit 8?

A. Yes, sir.

Q. And the amount of the value of the securities issued to the City is arrived at by taking the actual amount of bonds and TPCs which the City show were issued to them and applying to it the market value on that date?

A. Yes, sir.

Q. You have not in any instance departed from what the City reported they received in bonds and TPCs in satisfaction of these claims?

A. No, sir.

Q. Now, in the amount of cash paid, I will ask you, if in each instance you have taken the figures there as reported by the City, and reflected in Exhibit 8?

A. Yes, sir.

Q. And the rest of that, now, is your own computation based on the figures furnished by the City?

A. And the asked price from the records that were available to me.

Q. And can you then state that the computation, based on the figures which you obtained from the City, and the asked price of the bonds and the TPCs you received, as testified, are correct?

A. Yes, sir.

Mr. Berry:

I now offer this computation, if Your Honor please, as Defendants' Exhibit 47.

(Off the record discussion had relative to information obtained from Wright & Co. records.)

Mr. Berry:

Mr. Adams, we have here the original cards of Wright & Co. on which this was based; they were made up at the

time, and we will offer those for your inspection. We haven't been able to identify them at this particular hearing, but if you think that is not the market price, we can offer you the cards, and if you object to that, we can go into the evidence and proof later.

Mr. Adams:

We can check them; I don't know what the market price of them was at these times.

The Master:

You gentlemen can probably get together on that; if you can't agree, you can offer your evidence later.

Mr. Berry:

If the Court please, I now have another exhibit which I will now offer, which is prepared in exactly the same form, and with the same figures as in the exhibit just previously offered, except this one is prepared on the "bid" side of the market; that is, what people were offering. The proof on the bid quotations will be the same as that on the asked side of the market, which we will supplement if necessary, and I ask at this time that this be marked as Defendants' Exhibit No. 48.—I have one or two questions I would like to ask Mr. Bradford.

By Mr. Berry:

Q. Mr. Bradford, have you the original cards that you obtained from Wright & Co. carrying the quotations which you have used here?

A. Yes, sir.

Q. I will ask you now to produce them, and allow them to be submitted for examination to the other side to see if we can agree on anything.

A. (Producing cards) One set of cards deals with the quotations on refunding bonds, the other on tax participa-

tion certificates. (Cards tendered to counsel for Petitioner for examination.)

Mr. Berry:
That's all.

Mr. Adams:
We have no objection to the introduction of the two exhibits offered.

(Thereupon, said instruments were marked in evidence as Defendants' Exhibits 47 and 48, respectively.)

Direct Examination.

By Mr. Walton:

Q. Mr. Bradford, referring to the exhibit which is marked Defendants' Exhibit 47—is your copy so marked?

A. No; but that's on the asked side, is it not?

Q. Yes.

A. I have it before me.

Q. Am I correct in understanding from that exhibit that if the Helen O'Connell securities had been refunded under the plan proposed by the City, she would have received under that plan in exchange for her old securities, refunding bonds and tax participation certificates which, according to the highest asked price for the new securities, would have had a market value on October 18, 1937, of $9,693.75?

A. That is correct.

Q. That is correct?

A. Yes, sir.

Q. Am I also correct in understanding from the exhibit that, in lieu of receiving the securities as provided for in the plan which would have had that market value, she was paid the sum of $21,750.00 in cash?

A. That is correct.

Q. Am I also correct in understanding from the exhibit that instead of receiving what the plan provided for, she received cash, which was 224.37% of the value of the securities she would have received under the plan?

A. That is correct, based on the highest asked price.

Q. This same thing applied to all of the other creditors shown on Defendants' Exhibit 47, as creditors who received cash from the City?

A. That is correct, Mr. Walton. However, all of the percentages are not the same you will note.

Q. Do the varying percentages show the differences pertaining to each particular creditor's claim?

A. Yes, sir.

Q. Referring now to Defendants' Exhibit 48, that is the one which I believe you called on the "bid" side?

A. Yes, sir.

Q. Am I correct in understanding from the exhibit that if the Helen O'Connell securities had been refunded in accordance with the plan proposed in this proceeding, she would have received in lieu of her old securities refunding bonds and tax participation certificates which, at the highest bid price for similar securities, would have had a market value on October 18, 1937, of $8,775.00?

A. That is correct.

Q. Am I correct in understanding from the exhibit that in lieu of receiving the securities of that value under the plan, she was paid the sum of $21,750.00 in cash?

A. Yes, sir.

Q. Am I correct in understanding from the exhibit that the amount which she was paid in cash was 247.86% of the value, or rather, the market value of the securities she would have received on October 18, 1937, under the refunding plan, or plan of composition at the highest bid price?

A. Yes, sir.

Q. Is that true of all the other creditors shown on the exhibit except as to the variations of percentages pertaining to each particular case?

A. Yes, sir.

Mr. Walton:

That's all.

Mr. Berry:

I want to ask a couple more questions.

Direct Examination (Resumed).

By Mr. Berry:

Q. Mr. Bradford, referring to Exhibit 47, I notice you have the total claim acquired as $39,375.00, whereas Exhibit 8, on which that is based, shows the judgment as $40,372.36. Will you explain why that variance occurs?

A. I'm sorry; I cannot explain that, Mr. Berry. The information which I took as to claims acquired is set up in the exhibit under the caption "Old Securities Acquired". It shows that $21,750.00 was paid for the Helen O'Connell claim, and that the claims were of the issue of June 15, 1928; it shows the bond numbers and the maturities of the bonds, and that the bonds aggregate $30,000.00. The exhibit shows further that the unpaid coupons to January 1, 1937, amounted to $600.00, and that the interest on the past due bonds to January 1, 1937, amounted to $8,775.00. All of those claims aggregate $39,375.00.

Q. Then, Mr. Bradford, you were not attempting to make a distinction between the figure that appears on Exhibit 8 furthest to the left, of $40,372.36, and the figure which you have given, but you have simply added together the amount of the claim as set out in the detail, and accepted that?

A. That is correct.

Q. Now, this Exhibit 8, again, shows that the amount of refunding securities issued which the proof shows were issued to the City, were $15,000.00 principal amount of refunding bonds, and $24,375.00 of TPCs. Now, have you used those two figures in figuring the amount of the actual cash value of the securities received which, in the case of Helen O'Connell, was $21,750.00?

A. Yes, sir; against those respective amounts of refunding bonds and TPCs issued, I applied the market value of each to obtain the sum of the total value.

Q. Now, is that true with each other name which appears on Exhibit 47, and also Exhibit 48?

A. Yes, sir.

Q. And in each instance, instead of using the amount of the judgment or whatever is shown here furthest to the left, you have used the detail of the securities which the City acquired by those purchases?

A. That is correct.

Q. And you have used, in each instance, in figuring your percentages, the amount of refunding securities which were issued as appears from Exhibit 8?

A. . Yes, sir.

Mr. Berry:

That's all.

Direct Examination (Resumed).

By Mr. Walton:

Q. Mr. Bradford, referring again to Defendants' Exhibit 47, which is the exhibit covering the asked side, am I correct in understanding that the second from the last column shows the amount of cash received by each creditor in excess of the market value of new securities which the creditor would have received if that particular creditor's old securities had been refunded under the plan?

A. That is correct, based on the highest asked price.

Q. Am I correct in understanding from that column that Helen O'Connell received from the City, cash in the sum of $12,056.25 in excess of the market value of the new securities she would have received if her old securities had been refunded under the plan?

A. That is correct, Mr. Walton, with this one qualification, and I do not want to seem technical, but I do not understand Defendants' Exhibit 8 to reflect to whom the City made the payment. It merely shows that an amount was paid for the claim, and your question refers to an amount being paid to Helen O'Connell. As I say, I don't wish to be technical, but my answer is correct with respect to the amount actually paid by the City to someone.

Q. If I amend my question, to make it "paid to the holder of that claim, or to the person who sold that claim", would it state it more correctly?

A. I would prefer that you amend your question to show the amount paid by the City for the claim.

Q. For the claim; all right. Then, on that basis is my understanding correct?

A. Yes, sir.

Q. Referring to Defendants' Exhibit 48, which is on the bid side, am I correct in understanding that for the Helen O'Connell claim the City paid cash amounting to $12,975.00 in excess of the market value of the securities which the creditor would have received if that creditor's securities had been refunded under the plan, the figure being based on the highest bid price for the new securities?

A. Yes, sir.

Mr. Walton:

That's all.

Cross Examination.

By Mr. Haycock:

Q. Mr. Bradford, will you observe the line showing the purchases from Ed. C. Wright, referring to November 8, 1937, where you set up his claim as $53,781.25? Have you that before you, on Exhibit No. 47?

A. Yes, sir.

Q. Now, according to the records upon which you base this exhibit, taken from the office of Ed. C. Wright, you show here that the asked price on that particular day was 46 for bonds, and 8 for tax participation certificates, and that these securities would have a refunded value of $12,092.50, which is 22.48% of par, and that he was paid $26,240.00 for these securities, and that he received an excess of $14,147.50. Now, your exhibit here reflects that, does it not?

A. It reflects that $14,147.50 was paid in excess over the asked price, Mr. Haycock. I believe that is what you intended, but you just did not finish your question.

Q. To Ed. C. Wright?

A. Yes, sir.

Q. And it is from Ed. C. Wright's office you are using the records on which you base this exhibit?

A. The bid and asked price, yes, sir.

Q. So on that particular day the bid and asked prices were obtained from Mr. Wright's office?

A. Yes, sir.

Q. And that on that particular day when he made this sale, according to your Exhibit 47-I, he received $14,-147.50 in excess, and according to your Exhibit 48-I he received $14,749.22; that is, if the sale had been consummated in that manner.

A. Yes, sir.

Q. Mr. Wright was a broker, was he not?

A. Yes, sir.

Q. Do you know Mr. Vincent M. Doherty?

A. Yes, sir.

Q. You haven't examined any records in his office as to the asked and bid prices?

A. No, sir.

Q. Is Mr. Doherty a broker?

A. I believe he is.

Q. You know he is, do you not?

A. I can't say that I know he is. It is my understanding that he is.

Q. Now, this exhibit of yours where you merely list the names and amounts does not show the status of those particular claims at that time?

A. No, sir.

Q. Whether they were in judgment, whether the bonds had matured, or whether suits had been filed?

A. No, sir.

Mr. Haycock:

That's all.

Re-Direct Examination.

By Mr. Berry:

Q. Mr. Bradford, do you know of your own knowledge that any one of these persons on Defendants' Exhibits 47-I and 48-I actually made a trade with the City?

A. No, sir.

Q. Are you relying wholly upon the record furnished you as Exhibit 8 in this case for the testimony you have given?

A. Yes, sir.

Q. And you are not attempting to state a fact, but you are attempting to collect figures already in the record from another source?

A. That's all I intended to do, sir.

Mr. Berry:
That's all.

(Witness excused.)

Mr. Berry:
If the Court please, we desire to offer certain reproduced pictures of Coral Gables which were prepared by the Chamber of Commerce of Coral Gables, and are on one side of one sheet of paper, and we now ask we be allowed to file them as showing the samples of improvements in the City of Coral Gables, and ask it be marked Defendants' Exhibit No. 49.

Mr. Redfearn:
What is the date of it?

Mr. Clarke:
There is no date on it.

Mr. Adams:
We have no objection to the exhibit provided it is admitted by opposing counsel that the residences shown on this group of photographs are of recent construction, within the past year or eighteen months.

Mr. Berry:
We will accept that.

The Master:
Well, gentlemen, the exhibit is admitted, although I don't think it is relevant.

(Thereupon the said sheet of photographs was admitted and marked in evidence as Defendants' Exhibit No. 49.)

Mr. Clarke:

If it please the Court and the City; the City and the creditor, C. J. Root, with regard to one matter that was left unfinished at the special issues hearing some time ago, have stipulated on that matter, as follows:

It is Stipulated and Agreed between the petitioner, City of Coral Gables, and the creditor, C. J. Root, by their respective attorneys, as follows: That Carl L. V. Exselsen would, if sworn and produced as a witness in this cause, testify in response to the following questions, as follows:

"Q. At the time of your negotiations with representatives of C. J. Root culminating in the City of Coral Gables agreement with Root, dated December 1, 1937, (Special Issue Exhibit F), what was the City's agreement, if any, as to the twenty bonds owned by C. J. Root but not mentioned in the written agreement?"

"A. When the written agreement of December 1, 1937, was entered into between the City of Coral Gables and Mr. Root, the twenty bonds to which you refer were not included in the written agreement because they were not matured or immediately maturing, as were the bonds described in the agreement. At that time I, acting for the City, and Mr. Root by his attorneys, agreed that upon the maturity of these twenty bonds Mr. Root and the City would agree upon an extension of time of payment of the sums due under the twenty bonds to the same spread as provided in the written agreement for the thirty bonds and the coupons involved therein, and that interest would be reduced on the twenty bonds to the rate of 4% per annum, as had been done under the written agreement. During my negotiations with Root's representatives I reported the negotiations to the Coral Gables City Commission, reporting to them my complete agreement with Root, including that to be embodied in the written agreement and also the further agreement as to the twenty bonds, and

the entire transaction was approved by the City Commissioners".

And, it is further stipulated that the twenty bonds referred to in the question and answer aforesaid are the twenty bonds Numbered 146 to 150, 166 to 170, 186 to 190 and 206 to 210, all inclusive, more fully described in the pleadings filed in this cause by C. J. Root;

That the parties waive the production of said witness and agree that the above question and answer may be considered as the testimony of said Carl L. V. Exselsen to the same extent as if said witness had been sworn and had so testified, subject to any objections hereafter made by the Petitioner as to the materiality of said testimony or the authority of said Exselsen to make the agreement aforesaid". That is the stipulation entered into, and I believe it correctly states the stipulation, does it not, Mr. Adams?

Mr. Adams:
That's correct.

Mr. Clarke:
Now I offer in evidence in this case the question and answer aforesaid in the stipulation I have just read.

Mr. Adams:
And we move to strike the answer because the record shows no authority in Carl L. V. Exselsen to make any oral agreement with any creditor of the City, because the City Commission, as a matter of law, has no authority or right to make an oral agreement, and that there is no proper evidence of an oral agreement contained in this statement which would be binding upon the Petitioner, and the further ground that the exhibit referred to in the stipulation as the contract of December 1, 1937, was the

entire agreement between the City and C. J. Root consummated after the negotiations between Exselsen and the representatives of C. J. Root.

The Master:
The ruling on that question is reserved.

Mr. Adams:
At this time we would like to recall Mr. Shaw for the purpose of cleaning up some of the things which were left over from the previous hearing.

The Master:
All right; proceed.

1369 G. N. SHAW was recalled as a witness on behalf of the Petitioner, and being still under oath, further testified as follows:

Direct Examination.

By Mr. Adams:
Q. At a former hearing the Petitioner suggested that we take the responsibility of numbering the proofs of claim and consents that have been filed. Mr. Shaw, have you had all the proofs of claim and consents marked "Filed" in the Clerk's office arranged in what order, and numbered how?

A. We have arranged them in strict alphabetical order, Mr. Adams, and have then numbered them in sequence from One (1) to Five Eighty Three (583). In this sequence appears some "a" and "b" numbers, due to the fact that a few of the consents were in a separate folder in the Court file, and were not discovered by the girls who were listing them until the list had been made, and we found that our total did not agree. We then found those con-

sents in this separate folder, and inserted those in their proper alphabetical position, giving them "a" and "b" numbers to the numbers naturally preceding them in alphabetical order.

Q. Have you also had prepared an alphabetical list with the identification of the proof of claim and consent and the number that appears on it?

A. I have, sir, showing the number, the name of the claimant, the date of filing, the amount of bonds, and the amount of TPCs represented by the claim.

Q. You have checked those against Mr. Roberts' audit of the claims that was filed by the dissenting creditors, haven't you, as to the total number of proofs of claims and consents?

A. I have, and with certain minor exceptions this is exactly in accord with the audit. There are two or four—I have the recap here—which I will discuss later; two or four exceptions, I have forgotten which.

Mr. Adams:

The Petitioner offers the bound volume of proofs of claim and consents numbered 1 to 583, both inclusive, which have heretofore been filed in the office of the Clerk as the written acceptances of the Plan of Composition submitted to the Court for confirmation in this bankruptcy proceeding. And we would like to have bound with the proofs of claim and consents the index to them; that will facilitate reference in the future, but ask that it not be copied in as a part of the record of the hearing before the Master.

Mr. Berry:

If Your Honor please, I undertook at a former session to go into the validity of these consents on the ground that the securities were not presented here, and there was no evidence that the signers owned or held the securities at the time of consenting, and Your Honor ruled you

would not go into it at that time, stating that you anticipated that His Honor, Judge Holland, would at a later date order the filing or deposit of the securities for examination to see that these consents were proper, and if the consents without the filing of the securities are any evidence of the ownership by the signers of those presented, at this time, we again want to make objection on the same ground, and reserve the right to move to strike at the proper time, if and when Judge Holland enters such an order.

The Master:

My ruling on that will be reserved.

By Mr. Adams:

Q. Now, Mr. Shaw, have you made a study of the audit and exhibits prepared and filed by Charles S. Roberts, of the Defendants' Exhibits Nos. 39, 40, 41 and 42?

A. I have, Mr. Adams.

Q. Have you prepared a reconciliation of the Roberts audit and your audit of these consents?

A. I have, Mr. Adams?

Q. Now, Mr. Shaw, will you explain your reconciliation between the Abess, Costar & Roberts audit and your audit of Defendants' Exhibits 39 through 42?

A. I have here, Mr. Adams, a sheet entitled "Reconciliation between Abess, Costar & Roberts Audit and City Audit", and it refers to Exhibits D-39 to D-42. The total of the Abess, Costar & Roberts audit showed consents and proofs of claims on bonds of $2,877,500.00, and on tax participation certificates of $5,126,410.39. Now, they included in that total a proof of claim No. 148, which was not intended to be a separate proof of claim because they were in separate parts of the country—two trustees of the estate of John T. Dismukes—and each separately signed consents for the estate and sent them in. These

were submitted to the Court jointly, but the auditor picked them up as two individual consents. We deducted that $5,000.00 of bonds. In our examination of the consents found in the Court file and now included in that volume, we found items which we have numbered 137-a, John P. Danielson, 187-a, Frances Folsom, 387-a, Gertrude Morrison, 427-a, Eugene Phillips, which were not included in the detailed schedules of the Abess, Costar and Roberts audit, or the Roberts audit, as I will call it. This makes a total of $10,000.00 of bonds and $8,065.00 of tax participation certificates which we have added to the figures of their audit, giving a total, in accordance with the list submitted of the proofs of claim contained in that volume, of $2,882,500.00 of bonds, and $5,134,475.44 of tax participation certificates.

Q. Now, is the consent paragraph in the proof of claim included in each of these proofs of claim making up these totals?

A. No, sir. Eight of the proofs of claim were filed with the consent clause stricken out. The total of the securities involved is $7,000.00 of bonds and $71,674.04 of tax participation certificates.

Q. That doesn't appear in this reconciliation total?

A. No.

Mr. Adams:

Now we would like to offer this reconciliation of audit as Petitioner's Exhibit No. 50.

The Master:

It is admitted.

(Thereupon, without objection, said instrument was admitted in evidence as Petitioner's Exhibit No. 50.)

Q. Now, Mr. Shaw, have you made an audit of the entire file of proofs of claims and consents in this case and reduced to exhibit form the results of this audit?

A. I have, Mr. Adams, in two sheets, entitled: "The City of Coral Gables Analysis and Recapitulation of Proofs of Claim and Consents filed in Petition in Bankruptcy No. 1867-M".

Q. Will you explain to the Court the different subdivisions of this study?

A. The first line of this analysis shows the total of proofs of claim on file in the amount of $2,889,500.00 of bonds, and $5,206,149.48 of tax participation certificates. From this we have deducted the $7,000.00 of bonds, and $71,674.04 of tax participation certificates represented by the proofs of claim from which the consent clause was stricken. We have then deducted $20,500.00 as representing the tax participation certificate value of the two consents withdrawn by Court order at the request of the claimants, bringing the total of proofs of claim bearing consent clauses on file to $2,882,500.00 of bonds, and $5,113,975.44 of tax participation certificates. We have then adjusted for certain errors found in the proofs of claim both by the Roberts audit and by ourselves. An item of $36,500.00 of bonds is in accordance with Defendants' Exhibit 41, Exhibit "A" therein, and represents proofs of claim and consent where the ownership of the same securities was filed by different claimants. The item of $15,519.00 of tax participation certificates is of exactly the same nature as that of the bonds, and again is in agreement with the Defendants' Exhibit 41, Exhibit "C" therein. Then appears an error in Exhibit "A" of Exhibit 41, wherein the second item was actually a triplication, but was treated by the auditor as a duplication.

Q. So you are deducting in this statement this item of $2,000.00 again?

A. To cure the triplication, yes. Then the next item is certain duplications which were not discovered in the Roberts audit, representing Items 137-a and 137-b, both by John P. Danielson, and Items 187-a and 187-b, both by Frances Folsom, representing a total of $3,000.00 of bonds, and $5,027.05 of tax participation certificates. The deduction on account of the errors between the amounts of the proofs of claim and the securities listed therein, the error being in the amount of $2,000.00, is in agreement with Exhibit "B" of Defendants' Exhibit 41. The deduction of these errors, totaling $43,500.00 of bonds, and $20,546.05 of tax participation certificates, cures all of the actual errors in the documents and leaves the balance of consents, after the elimination of the non-consents and the errors, at $2,839,000.00 of bonds, and $5,093,429.39 of tax participation certificates. On the second sheet of the analysis we have taken up the exceptions made by the defendants for reasons other than errors, as shown by the Roberts audit. The first line is simply a forwarding of the amount from the previous sheet. Exhibit No. 1 of Defendants' Exhibit No. 42, excepted to certain claims on the ground that the items did not agree with recorded ownership on the date of filing. This has been deducted, in the amount of $63,924.55. Defendants Exhibits 3 and 5, in Exhibit 42, excepted to certain proofs of claim and consents as being filed by agents, executors, and so forth, in the amount of $156,500.00 of bonds, and $307,696.75 of tax participation certificates. Then there is an adjustment in the amount of $2,500.00 of bonds, and $5,978.22 in tax participation certificates by reason of the fact that certain items described on the sheet were included in both of the exceptions mentioned above. Deducting these exceptions, we have a remainder of $2,685,000.00 of bonds, and $4,727,786.31 of tax participation certificates, to which no exceptions were made. We have then shown, Mr. Adams, the amount of the items in Ex-

ceptions Nos. 3 and 5 above, for which the City, this says, has filed—I will say, has hereto filed documents showing the authority of the agents, executors, and so forth, to act.

Mr. Walton:

Just a moment, may it please the Court. We object to the witness testifying to the figures immediately following the item he has mentioned, on the ground that his testimony would be his opinion and conclusion as to the legal sufficiency of the documents to which he refers.

The Master:

The objection is overruled. Counsel can check, and if the witness is wrong, you can point it out.

A. (Continuing.) These supporting papers represent consents totaling $120,500.00 of bonds, and $263,642.12 of tax participation certificates. The next item represents an exception, taken for dual reasons, to the claim filed by Frances and Mitchell Wolfson in the amount of $8,500.00 of bonds and $5,978.22 of tax participation certificates. Exceptions to this claim were taken on the ground that it did not agree with the recorded ownership on the date filed, and also that it was an agency or trusteeship, in that list of exceptions. In this case, Mitchell Wolfson simply joined with his wife, Frances Wolfson, who was the recorded owner, and there is no question of agency or trusteeship and no disagreement with the recorded ownership. The next item represents a proof of claim filed by the Lincoln National Life Insurance Company on behalf of the Royal Union Fund in the amount of $18,614.90 of tax participation certificates for which I have here the correspondence showing the reference by the Royal Union Fund to the Lincoln National Life Insurance Company for this purpose, and expressing the

authority of that company to act for the Fund. These additions total $129,000.00 of bonds, and $288,235.24 of tax participation certificates, bringing the total to $2,814,-000.00 of bonds, and $5,016,021.55 of tax participation certificates, making a total of indebtedness represented of $7,830,021.55. the 66-2/3% of the $11,182,606.36 debt outstanding as of January 1, 1937, would be $7,455,070.91, leaving a surplus of consents of $374,950.64.

Q. Now, Mr. Shaw, does your figure there of $7,455,-070.91 correspond with the figure in the Roberts audit?

A. It does.

Mr. Adams:

We would like to have this recapitulation marked for identification as Exhibit No. 51, comprising two sheets.

The Master:

Any objection?

Mr. Berry:

Yes, if Your Honor please, we object to the exhibit and move that that and the testimony be stricken on the ground it is based upon the offer of the consents to which we have objected, and to which Your Honor has reserved the ruling, and if Your Honor should sustain that objection, there would be no basis for the testimony on this exhibit.

Mr. Adams:

I have just offered it for identification.

Mr. Berry:

I want to make the objection to his testimony, and I suppose Your Honor will reserve ruling on that along with the other.

The Master:
Yes.

(Instrument marked Petitioner's Exhibit No. 51 for identification.)

Mr. Adams:
We will now offer as a group exhibit the Authorizations for the parties executing the proofs of claim shown on the attached schedule, the schedule and authorizations being a group, and identified as Petitioner's Exhibit No. 52. Now, this is a list of those proofs of claims which you can use to examine them by.

Mr. Berry:
We object to that, if Your Honor please, as referring to proofs of claim that have not been formally admitted in this case and which may not later be admitted, and secondly, until such time as we may examine the documents offered, and that they be marked for identification only.

The Master:
It is so ordered.

(Authorizations and list marked as Petitioner's Exhibit No. 52 for identification).

Q. Now, Mr. Shaw, do the authorizations offered as the group Exhibit No. 52 involve consents in the amount shown in your Exhibit 51, on the second page, and the first group of additions that you have made to the exceptions made in the Roberts audit?
A. They do, Mr. Adams.
Q. And if these authorizations are filed, then that will constitute a curing of acceptances involving $120,500.00

of bonds and involving $263,642.12 in amount of tax participation certificates?

Mr. Walton:

If the Court please, we object to that as calling for an opinion and conclusion of the witness.

The Master:

Objection sustained. That question isn't necessary, anyway.

Mr. Adams:

All right, sir.

Q. Now, Mr. Shaw, what percentage of acceptances is shown in your Exhibit No. 51 of the aggregate outstanding indebtedness of the City?

A. $7,830,021.55 represents 70.01% of the $11,182,606.36 of total debt outstanding as of January 1, 1937.

Q. Now, you have heretofore testified what percentage of consents had been filed. Is that in accord with this testimony now?

A. No.

Q. Why?

A. I previously testified—I do not have the exact figure, but I believe approximately 75%. The difference is due to a misunderstanding on my part of the treatment of city-owned securities, which came to light in a discussion between you and me within the past ten days. That accounts for the difference between my previous higher percentage in the testimony and in this figure.

Mr. Adams:

That's all on this question until he gets before the Court the additional data we have in regard to the proofs of claim.

The Master:
You have no more testimony to offer this afternoon?

Mr. Adams:
No, sir.

The Master:
Have you gentlemen any testimony to offer at this time?

Mr. Walton:
No, sir.

Mr. Lea:
We will cross examine Mr. Shaw on all of this as soon as we get a chance to study these documents.

(Thereupon, a recess was taken at 4:00 P. M., to the following afternoon at 2:00 P. M., August 7, 1941, at which hearing Mr. Clarke did not appear.)

An off-the-record discussion was had between counsel relative to the exhibits introduced by the Petitioner on the previous day, and in particular, with reference to the Authorizations presented, after which the following occurred:

Mr. Walton:
If the Court please, in reference to this file of authorizations which was turned over to me yesterday for examination, I had to go into a pre-trial conference before Judge Holland at 10:00 o'clock this morning and he didn't turn me loose until 1:15, so I haven't had a chance to go over them. If it is agreeable with the Master and counsel, the defendants would like to reserve their objections until a later time, and not endeavor to object to these

at this time, because we haven't adequately prepared ourselves to do so.

The Master:

So long as that is done promptly, that will be satisfactory, and it is so ordered.

Mr. Adams:

In tendering the Petitioner's Exhibit No. 51, being an analysis and recapitulation of proofs of claims and consents filed in the Petition in Bankruptcy No. 1867-M, the Petitioner by showing in this analysis and audit of those consents an item entitled: "Less: Defendant's Exception No. 1 in Exhibit D-42, items claimed not in agreement with recorded ownership of date filed, $63,924.55", the Dollar Mark being under the captioned head "Tax participation certificates", does not intend to admit that the objection or exception to the allowance of these acceptances is well-taken, but reserves the right to contend that these consents should be counted in favor of the plan.

The Master:

The right is reserved.

Mr. Adams:

We have nothing further at this time.

(Discussion as to date of adjournment, and hearing recessed until September 16, 1941, at 10:00 A. M., which hearing was postponed on account of the illness of the Court reporter, which prevented the transcript of the proceedings of August 5, 6 and 7, 1941, from being prepared and completed prior to September 16, 1941, and upon agreement of counsel and the Master, the hearing was postponed to the 4th day of November, 1941, at 10:00 A. M., in the office of the Master.)

In the United States District Court in and for the Southern District of Florida, Miami Division.

In the Matter of:
The City of Coral Gables, Florida.
In Bankruptcy No. 1867-M.

This Cause came on for further hearing before the Honorable F. M. Hudson, Special Master herein, at 10:00 o'clock A. M., on the 15th day of December, A. D. 1941, at the offices of Hudson & Cason, Seybold Building, Miami, Florida, pursuant to that certain Order entered herein by the Honorable John W. Holland, Judge of said Court, on the 21st day of November, A. D. 1941.

There was present at said hearing on behalf of the Petitioner, the City of Coral Gables, Mr. Morton B. Adams, Mr. D. H. Redfearn and Mr. Ira C. Haycock, of counsel for Petitioner. There was also present, on behalf of objecting creditors, Mr. Olin Watts and Mr. Edwin M. Clarke, of the law firm of Jennings & Watts, of Jacksonville, Florida; Mr. F. A. Berry, of the law firm of Bass, Berry & Simms, of Nashville, Tennessee; Mr. S. O. Carson, of St. Petersburg, Florida; Mr. Miller Walton, of Miami, Florida, of the law firm of Casey, Walton & Spain.

Thereupon, the following proceedings were had:

The presentation of the case on behalf of the objecting creditors was resumed at this hearing, and after an off-the-record discussion, the following stipulations were entered into:

Mr. Walton:
It is hereby stipulated and agreed by and between all parties that the first exchange of refunding bonds and

tax participation certificates dated January 1, 1937, was made through the Central Hanover Bank & Trust Company in the City of New York on the 24th day of September, 1937, upon surrender of the then outstanding unrefunded bonds.

It is further stipulated that the exchange of such refunding bonds and tax participation certificates of Coral Gables Bondholders' Protective Committee was made September 30, 1937.

It is further stipulated that the market values of such refunding bonds and tax participation certificates, according to the bid and asked prices as set forth in the Defendants' Exhibits 47 and 48, represent the true market value of the securities as of the dates mentioned in the exhibits.

Mr. Walton:

The Defendants offer in evidence a Special Warranty Deed dated October 11, 1937, recorded in the public records of Dade County, Florida, in Deed Book 1901 at Page 231, being from the City of Coral Gables to Coral Gables Development Company.

Mr. Adams:

We object to the introduction of this deed on the ground that it is incompetent, irrelevant and immaterial to any of the issues of this cause; on the further ground that the record already shows that this property conveyed by the City to the Coral Gables Development Company in this deed was conveyed to them and delivered to them as a part of the transfer of the delinquent tax assets of the City under the contract between the Coral Gables Development Company and the City, which is Defendants' Exhibit 6, and that the introduction of this deed adds

nothing at all, and there is no issue as to that piece of property having been conveyed by the City to the Coral Gables Development Company, and it is just encumbering the record to have the copy of the deed put in. (Discussion, off the record).

The Master:

My ruling on the present tender of testimony is that the deed will be admitted subject to future motion to strike, if counsel for the Petitioner see fit; you can proceed.

Thereupon, a further stipulation was entered into, as follows:

Mr. Walton:

It is stipulated between all parties that the deed tendered and admitted is withdrawn, and that subject to all of the objections made by the Petitioner, the list herewith tendered which is to be marked Defendants' Exhibit No. 50, may be filed in evidence, and that the deeds described on the list were executed and delivered to Coral Gables Development Company, purporting to cure title or convey title subject to all unpaid taxes and liens of record to all properties and lots described in the deed from Coral Gables Development Company to Henry L. Doherty & Co. Inc. dated January 31, 1941, recorded in the public records of Dade County, Florida, in Deed Book 2138 at Page 379, and that the properties described in all such deeds are properties on which Coral Gables Development Company acquired tax sales certificates of the City of Coral Gables for 1936 and prior years, excepting that the City assigned to Coral Gables Development Company no tax sales certificates on the property described in the deed dated October 11, 1937, by the City of Coral Gables to the Coral Gables Development Company.

It is further stipulated that the described deed from Coral Gables Development Company to Henry L. Doherty & Co. Inc., purports to convey or cure the title to..... lots on which the Coral Gables Development Company previously acquired Coral Gables tax sales certificates for 1936 and prior years.

1387 Thereupon: G. N. SHAW was recalled as a witness on behalf of the Petitioner, and being still under oath, further testified as follows:

Cross Examination (Resumed).

By Mr. Berry:

Q. Mr. Shaw, I will show you a list showing sales of tax sales certificates to the Coral Gables Development Company under Resolution No. 1971, which receipts are dated from July, 1939 through October, 1940, which list shows the receipt numbers opposite the dates, and shows the total face value of those certificates as being $23,733.05, and I will ask you if those tax sales certificates were sold to the Coral Gables Development Company as reflected in this list?

A. They were.

Q. Now, for that sale the Coral Gables Development Company paid the City cash, according to this, $10,446.46. Is that correct?

A. That is correct, sir.

Q. And then the last column on this shows a credit to "Applied against credits for certificates previously reassigned to City amounting to $13,286.59". Is that correct?

A. That is correct, sir.

Q. Now, what certificates were previously reassigned to the City?

A. The certificates, Mr. Berry, were those which had been sold to the Coral Gables Development Company on the property involved in the county's widening of the LeJeune Road south of Bird Road, and on the Laesch tracts in the Riviera section along Sunset Road, which Laesch tracts had been ousted from the City, and the City was endeavoring to maintain the canal and principal road rights-of-way through them. The City secured the reassignment of the tax certificates on those lands held by the Coral Gables Development Company and established a credit on its books to be used in the payment of the operating portion of other tax sales certificates which might be purchased from the City by the Company.

Q. Now, Mr. Shaw, when you had assigned back to you these certificates on this list totaling $13,286.59, I will ask you whether that amount is the full face amount of the certificates assigned to you?

A. Yes, sir. We established a credit in the full face amount of the certificates returned.

Q. Did that include any interest?

A. No, sir.

Q. From the date that you had sold them to the Coral Gables Development Company, to the date of repurchase?

A. No, sir.

Q. Was that the same face figure that was used when they were originally sold to the Development Company?

A. That is correct.

Q. And at what price or what discount had you originally sold them to the Development Company?

A. That's a rather hard question, Mr. Berry. There is a lot of argument on that point. I can only say that we sold them certificates in the approximate face amount of $696,000.00, together with certain lands, being the Mahi Shrine lands, and certain tax participation certificates, for $396,400.00, I believe.

Q. The details of that sale have been previously testified to by you in detail?

A. Yes, sir.

Q. And your answers now would be the same as then, of course?

A. Yes, sir.

Q. Now, can you state, Mr. Shaw, that each of the certificates which were assigned—which were re-assigned to the City of Coral Gables related to lands on which you wanted to acquire an additional right-of-way either for a road or for a canal?

A. Directly or indirectly, yes, sir.

Q. Well, what do you mean "indirectly"?

A. In the case of the Le Jeune Road improvement, all of the lands involved affected the new right-of-way. In the case of the Laesch tracts which had been foreclosed, and in which foreclosure the rights-of-way had been obliterated, the City arranged to secure repossession of the tax certificates which had been sold upon the tracts as a whole, and to permit the settlement of those tax certificates for the payment only of the debt service portion thereof, provided that the owners of the tracts would permit the re-establishment of the rights-of-way.

Q. Now, Mr. Shaw, I will ask you to file the list which you are referring to as Defendants' Exhibit 51.

The Master:

Let me ask Mr. Shaw a question. I understand that these tax certificates were re-acquired for the purpose of trading them for right-of-way concessions; is that it?

A. That is correct, sir.

Mr. Adams:

Wait a minute. Trading the operating tax portion of the certificates for rights-of-way, and the debt portions of the certificates was paid in cash, wasn't it, Mr. Shaw?

A. Well, can't I just say that the certificates were acquired for the purpose of enabling tax settlements to permit the establishment of rights-of-way?

Mr. Adams:

Tax settlements of what portions of the certificates?

A. Well, there you have another situation. Tax settlements of the operating portions of the certificates.

The Master:

It is admitted as Defendants' Exhibit 51.

(Thereupon said instrument was admitted and marked in evidence as Defendants' Exhibit No. 51.)

Q. Now, Mr. Shaw, when you reacquired these certificates totaling approximately $13,000.00, how much of that $13,000.00 did you collect in cash from the obligors of those old taxes?

A. I could not answer that, Mr. Berry, without going back to the records. There was no collection, I believe, on account of the Le Jeune Road lands since that transaction was the clearing up by the City of the right-of-way for the county. I don't remember what portion of this covers the Laesch tracts.

Q. Mr. Shaw, what portion of the delinquent taxes did you cancel in consideration of the owners of the property conveying you a right-of-way for any purpose?

A. My recollection is the operating portion of all the taxes, Mr. Berry.

Q. What per cent of the total was the operating portion?

A. Due to the variance of the years involved, I couldn't say, off-hand.

Q. Well, approximately what was the range of the variance?

A. At present the operating tax is approximately 60% of the whole. I am speaking now of recent years. Some of these years were older ones in which there may have been a considerable variance in that.

Q. It would be less than 60%, would it not, Mr. Shaw?

A. I think so.

Q. Now, the 40% for debt service, was that collected or attempted to be collected?

A. It was, I think on all years, in the case of the Laesch tracts.

Q. And what was the total amount of certificates involved in the Laesch tracts, as you call it?

A. I have not that information with me, Mr. Berry.

Q. Can you approximate it?

A. No, sir.

Q. Did you, by this repurchase, obtain control of all the delinquent tax claims against the Laesch tract existing at that time?

A. I think that we must have; I don't remember whether there were any exceptions.

Q. Did you then go through the form of the foreclosure of those tracts for the settlement of these taxes?

A. No, sir.

Q. In that instance why did you not, Mr. Shaw?

A. Because, as I have explained, Mr. Berry, we arranged a settlement of those taxes to secure the continuance or re-establishment of certain road and canal rights-of-way through those tracts which the City Commission thought was essential to the proper development of the lower Riviera section.

Q. Well, did you cancel, then, all of the taxes in arrears on the Laesch tract at that time?

A. We did, all except that portion which was paid under the terms of the agreed settlement.

Q. And that was not true, though, as to the other taxes other than the Laesch tract?

A. I don't remember exactly how we handled the LeJeune Road matter. As a matter of fact, I think we stopped and left the matter in suspense when our certificates were returned to us. I am not sure that we have even

canceled it. There is a question of re-platting those lands, and several other things that must be done, and we have had it, I think, in a state of suspense.

Q. What was the date of the reacquisition of those delinquent taxes or certificates?

A. The only information I have here, Mr. Berry, is the application of the credits to other receipts. It commences on December 8, 1939. I can't give you here the exact date of the LeJeune or the Laesch transactions.

Q. Were those reassignments all at one time, or from time to time?

A. They occurred in two large cases, one when the LeJeune Road matter was up and the other when the agreement was reached on the Laesch matter.

Q. And you think that was in 1939?

A. I think it was in 1939, since the great bulk of the credit was used in February, 1940.

Q. And since that time, outside of the settlement on the Laesch tract, the rest of it has simply been held in suspense by the City?

A. That is correct. That's my recollection. Let me put it that way. I'll have to look it up.

Q. Well, will you supply to this record the detail of the total amount of the delinquencies in relation to the Laesch tract?

A. Yes, sir.

Q. And the total amount of the delinquencies as to others, and in addition to that the amount that has been canceled as to others in consideration of the conveyance of rights-of-way, and any other payments that have been made in reference thereto?

A. Yes, sir.

Q. You collected a certain amount of cash from the certificates on the Laesch tract. What did you do with that collection of money, Mr. Shaw?

A. It went to the several funds to which it was due.

Q. If I understand you correctly, the ordinances levying the tax apportion it, and you collected certain of those apportionments and distributed it in pursuance to the ordinances levying it? Is that correct?

A. That's correct.

Q. Mr. Shaw, you have previously testified that the City directly, or through agents, purchased unrefunded bonds which were later exchanged for refunding bonds which were carried in the general assets of the City, excluding those held in trust funds. These bonds had interest coupons which were paid out of your various debt levies from time to time, and I now ask you what disposition was made of the proceeds of that interest collected by Coral Gables bonds which it itself owned, beginning in the year 1937 when you first acquired them?

A. I do not have the details here, Mr. Berry, but I can say generally that in at least one of the years the greater portion if not all of the money was used for the purchase of other refunding bonds on the market. When not so used, the money has been simply turned in to the general funds of the City.

Q. I will ask you if in any instance the proceeds of that interest from those bonds has been used for distribution to the holders of TPCs who received TPCs in exchange for the old bonds of the City?

A. No, sir, it has not.

Q. In distributions which have been made to the holders of TPCs, did the City, as a holder of TPCs in its treasury receive the same distribution as other holders?

A. It did, sir.

Q. The bonds which you purchased and have just testified to with this interest money, were they canceled by the City or are they held as an asset in the treasury of the City at this time?

A. I could not say, Mr. Berry, as to those particular bonds. When cancellation dates have been reached we

have never particularly chosen specific bonds, but have simply canceled a required number of bonds from those we held.

Q. I think I understand you, and in your previous testimony you stated that you had canceled from year to year bonds under the required minimum of Section 12 of Ordinance 269?

A. That's right.

Q. Now, you mean you did not cancel any bonds in excess of that required minimum under Section 12 of Ordinance No. 269?

A. Slightly in excess, Mr. Berry, only in so far as we wanted to get rid of certain odd amount bonds that we had, and in one or two of the years we threw those in and created a slight overage.

Q. And when you acquired bonds at a later date you simply put those into the general bonds held by you, and then canceled out of that mass, without regard to the parentage of the particular bond or how you acquired it?

A. That is correct, sir.

Q. Mr. Shaw, I believe you stated that you had received to the same extent as other holders of TPCs the distributions made in relation to that. Were the distributions which the City received on the TPCs used in the same way as the bond interest?

A. Yes, sir.

Q. Was there any distinction made in its use?

A. No, sir. I presume that what you mean specifically is, were they applied to debt service or to other TPC distributions, and to that, the answer is "no".

Q. The money that went into your general fund was largely used for operating purposes, I presume?

A. That is correct, sir.

Q. Mr. Shaw, did you prepare a list of the numbers of bonds canceled as contained under the requirements

of Section 12 of Ordinance 269 from the date of the refunding up until now?

A. I did, Mr. Berry.

Mr. Berry:

I will ask that you file that as Defendants' Exhibit No. 52.

(There being no objection, said instrument was admitted and marked in evidence as Defendants' Exhibit No. 52.)

Q. Mr. Shaw, when Mr. Exselsen completed his services for the City, what records did he return to the City at that time?

A. He returned, Mr. Berry, certain volumes on which he had attempted to record the ownership and trace the refunding progress of the individual bonds; he returned to the City the refunding settlement register which had been kept in New York for convenience in making the transfers; he returned the records of the disbursements by him of City funds which had been turned over to him for specific uses; and in general, all records that had been loaned him by the City to assist him in his work.

Q. Now, the records which you have just mentioned, loaned by the City, were not prepared by Mr. Exselsen or no additions made to them by him?

A. Not to my knowledge.

Q. And those records have been available during the testimony in this cause heretofore?

A. Yes, sir; they are a part of our regular records.

Q. Now, the records of disbursements by Mr. Exselsen, what is the form of that?

A. We have his bank statements; we have his own statements showing the description of each disbursement;

we have the documents, some of which have been introduced in this case, which covered those disbursements; if I am not mistaken we have either his checks or photostats of his checks for those disbursements; all of which were audited by our regular city auditor.

Q. Now, Mr. Shaw, the first statement that you made that you had some volumes in which he had a record of his transactions, what do you mean by volumes?

A. One of those volumes, Mr. Berry, was the enormous volume that we used in about a day's testimony on this case that you may remember, that describes the details of each settlement, each exchange. Another was a still larger volume which had an entry for each bond, and the coupons, which were known to be outstanding in connection with that bond, and the provisions for showing the owner, and so on and so forth. I might say that those records were built up by Mr. Exselsen's own clerical force, either here or in New York.

Q. Were there only two of those volumes?

A. That is all that I recall.

Q. Where are they now?

A. At the City Hall.

Q. And are these other document records that you speak of at the City Hall?

A. At the City Hall, yes, sir.

Q. And the records loaned by the City are at the City Hall?

A. Yes, sir, but I would have no knowledge at this time as to just what they were. We loaned him at certain times certain of the canceled bonds of the various issues for study, and things of that kind, and they have all been returned, and returned to their regular place in the files.

Q. Now, the refunding register, you said, is still in the City of New York?

A. No, sir; that is with us; we have used it in this case.

Q. That is here at the present time?

A. Yes, sir. I said that that was prepared in New York.

Q. Mr. Shaw, you now have produced Resolution No. 1847 and Resolution No. 1971, asked for earlier?

A. Yes, sir.

Mr. Berry:

I will ask that you file Ordinance No. 1847 as Defendants' Exhibit 53, and No. 1971 as Defendants' Exhibit No. 54.

(There being no objection, said instruments were admitted and marked in evidence as Defendants' Exhibits 53 and 54, respectively.)

Q. Mr. Shaw, I have here a document entitled "Estimate of future assessed values in City of Coral Gables Developed under 3½% compound annual growth rate applied only to buildings and personal property (after giving effect to approximately $1,000,000. new building in 1936) together with estimated debt service taxes resulting therefrom at fixed millages indicated, and application thereof under provisions of proposed plan of refunding and liquidation of the outstanding bonded and floating indebtedness of the City of Coral Gables", and I will ask you what that document is, and who prepared it.

A. That document is an attempted forecast made in 1936 of the proposed debt adjustment plan. The data through the seventh column was prepared by me, or is based upon figures prepared by me.

Mr. Walton:

Excuse me. When you say the seventh column, which of the columns do you refer to?

A. The one headed "Total assessed valuation"; through that column. The remaining figures were prepared by Carl

L. V. Exselsen as his estimate, based upon those assessed values of the probable future progress of our refunding plan. I might say that this is somewhat similar to Petitioner's Exhibit No. 27, with the exception that in Exhibit 27 we have applied the benefit of experience and research since this time, and have improved the method of anticipating future growth; and I believe that in testifying on Exhibit 27 I called attention to these differences.

Q. Mr. Shaw, it has been shown heretofore by documents filed herein that Mr. Exselsen had a contract with the City. Now, in the scope of his employment under that contract, or contracts, was he furnished the paper that you have just described to be used in connection therewith?

A. As a matter of fact, Mr. Berry, Mr. Exselsen prepared and furnished to me the complete paper which we are discussing, from the assessed valuation data through Column 7, which had been furnished him by me.

Q. Well, was it used by Mr. Exselsen during that period as part of the documents which he had in his possession?

A. It was used, Mr. Berry, in the study of the plan made by the City Commission, and while I had no personal knowledge of his having done so, I assume that Mr. Exselsen went over it with some of the creditors with whom he was in contact.

Mr. Berry:

I now ask that the Document be filed as Defendants' Exhibit No. 55.

(There being no objection, said instrument was admitted and marked in evidence as Defendants' Exhibit No. 55.)

(Following this, a recess was taken from 12:00 noon until 2:00 P. M., at which time the hearing was resumed.)